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ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

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COMMISSIONER

VAUKEEN Q. MCCOY
COMMISSIONER

VIRGINIA E. VIDA
EXECUTIVE DIRECTOR

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NOTICE OF

SF ETHICS COMMISSION INTERESTED PERSONS MEETING

TO DISCUSS PROPOSED REGULATIONS RELATED

TO THE PUBLIC FINANCING PROGRAM

AND IMPLEMENTATION OF PROPOSITION E

The San Francisco Ethics Commission will convene a meeting of interested persons to discuss (1) proposed regulations to implement provisions of the Campaign Finance Reform Ordinance related to the public financing program, and (2) implementation of Proposition E, which was recently adopted by the voters of San Francisco and amended the City's ethics laws. The meeting will be held on:

Monday, January 5, 2004
10:00 a.m – 12:00 p.m
Room 421 City Hall

The City provides public matching funds to candidates for the Board of Supervisors who raise certain threshold amounts in private contributions, agree to limit their spending and meet other requirements. The Ethics Commission implemented the matching funds program for the first time during the 2002 election season.

Based on its experience during the election season, the Ethics Commission proposed, and the Board of Supervisors adopted, changes to the public financing program. The Commission has proposed regulations to implement these changes, and invites all interested persons to attend a meeting on **January 5, 2004,** to provide comment on the proposed regulations. The proposed regulations and a staff memorandum summarizing them are available from the Commission office or on our website at www.sfgov.org/ethics.

Proposition E, which the voters adopted on November 4, 2003, made many changes to the City's ethics laws. The Commission will have a number of tasks to perform to implement Proposition E, some of which are fairly immediate and some of which may be undertaken over a longer period of time. Attached is a staff memorandum on the implementation of Proposition E. An initial set of draft regulations will be available in advance of the interested persons meeting at the Commission office or on our website. The Commission welcomes your input on the implementation of this law.

30 Van Ness Avenue, Suite 3900 • San Francisco, CA 94102-6027• Phone (415) 581-2300 • Fax (415) 581-2317
E-Mail Address: ethics.commission@sfgov.org Web site: sfgov.org/ethics

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If you would like to register for this meeting, please call the Ethics Commission at 581-2300, or email us at ethics.commission@sfgov.org. Space may be limited, so please register in advance. If you cannot attend, please convey your questions and comments about the public financing program and Proposition E by email or by fax at 581-2317.

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ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

ROBERT R. PLANTHOLD
CHAIRPERSON

MICHAEL L. GARCIA
VICE-CHAIRPERSON

MICHELE ANGLADE
COMMISSIONER

WAUKEEN Q. MCCOY
COMMISSIONER

PAUL H. MELBOSTAD
COMMISSIONER

VIRGINIA E. VIDA
EXECUTIVE DIRECTOR

DATE: December 3, 2003

TO: Members, Ethics Commission

FROM: Ginny Vida, Executive Director *G. V.*
Mabel Ng, Deputy Executive Director

RE: Implementation of Proposition E: Ethics Reform

At the November 2003 general election, the voters adopted Proposition E—the Ethics Reform package that the Ethics Commission developed. Proposition E, which includes amendments to the Charter, takes effect when the Secretary of State receives the measure, which should occur within the next week.

The Ethics Commission has a number of tasks to perform to implement Proposition E, some of which are fairly immediate and some of which may be undertaken over a longer period of time. Staff anticipates that these tasks will entail a large expenditure of the Commission's limited resources over the coming year. The tasks include:

- training and development of educational materials;
- adoption of implementing regulations;
- adoption of waiver policies; and
- development and approval of departmental incompatibility statements.

This memorandum summarizes some of the specific tasks that staff will be undertaking in the near future, some of which will require action by the Commission.

1. Training and educational materials

The Commission will play an important role in training City officers and employees about these new laws. With limited staff resources, one of the ways the Commission can accomplish this is through updating its booklet on government ethics laws and making the amended provision available on the website as soon as possible. Putting additional announcements of major changes on the website may also serve as a useful way to deliver information quickly. As time and resources permit, Commission staff will develop additional training programs and materials.

Because one of the biggest changes to the law is the section on post-employment restrictions, and this is a period of transition for many City employees, the Commission

staff proposes sending a notice to departments to alert their employees to these new rules this month.

2. Adoption of implementing regulations

The Commission has general authority to adopt regulations implementing the City's ethics laws. Staff will develop regulations to resolve ambiguities and add definitions for some of the provisions of Proposition E. The Commission will need to consider and approve any such regulations.

In addition to this general authority, several provisions of Proposition E specifically direct the Commission to adopt implementing regulations. These include the following mandatory regulations:

- Prohibition on gifts from subordinates (C&GCC § 3.216(c): requiring regulations to implement this section, including regulations exempting voluntary gifts or gifts given under circumstances where gifts are traditionally exchanged).

- Post-employment restrictions (C&GCC § 3.324: requiring regulations implementing waiver provision for members of boards and commissions who by law must be appointed to represent any profession, trade, business, union or association).

In addition, one section provides that the Commission *may* adopt regulations:

- Disclosure of personal, business, and professional relationships (C&GCC § 3.214: providing that Commission may adopt regulations detailing the types of personal, professional, and business relationships covered).

Staff anticipates proposing these regulations at the February, March and April meetings.

3. Adoption of waiver policies

Several sections of Proposition E provide that the Commission may waive a particular provision under specified circumstances. (*See* C&GCC § 3.226 (compensated advocacy); C&GCC § 3.226 (benefits for referrals); C&GCC § 3.324 (post-employment and future employment restrictions)). Commission staff will need to develop policies for granting waivers to ensure a fair and consistent application of these provisions. Staff anticipates proposing these policies at the February, March and April meetings.

4. Development and approval of incompatibility statements

One of the more immediate tasks will be to inform departments, boards and commissions of the requirement that they must submit a statement of incompatible activities to the Ethics Commission by August 1, 2004. Departments may require the staff's assistance in developing these statements, and once the statements are submitted, the Commission will need to review and approve or amend them. Staff anticipates sending materials to departments about this obligation in early January. The Commission will need to develop procedures for considering and approving or amending department statements.

Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
JANUARY 12, 2004, 5:30 P.M.
and AGENDA

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Approval of the minutes of the Ethics Commission meetings of December 8, 2003 and special meeting of October 3, 2003. (Discussion and possible action.)

IV. Proposed regulations for implementation of the recent amendments to the Campaign Finance Reform Ordinance. Proposed regulations will clarify ambiguities related to, but not limited to, the public financing program, expenditure and contribution limits, filing requirements, and use of campaign funds. This item was continued from the December 8, 2003 meeting. A staff report is available from the Commission office and on its web site. (Discussion and possible action.)

V. Executive Director's report
1. Budget update
2. Limited public financing program
3. Legislative developments
4. Advice and opinions
5. Investigation and enforcement program
6. Campaign finance disclosure program
7. Electronic filing program
8. Campaign finance audit program
9. Lobbyist program
10. Campaign consultant program
11. Statements of Economic Interests
12. Sunshine Ordinance Declarations
13. Education and outreach
14. Plans for governmental ethics conference in December 2004
15. Notice of retirement effective June 1, 2004

VI. Proposed budget for the Ethics Commission for FY 03-04 and FY 04-05. The Commission will consider two possible budgets: (a) a proposed FY 04-05 budget that meets the Mayor's

instructions to reduce spending by 5.5% and an additional contingency amount of 15%; and (c) a proposed FY 04-05 sufficiency budget that would enable the Commission to fulfill its mandates. Draft reports on the proposed budgets will be available from the Commission office and on its web site. (Discussion and possible action.)

VII. Plans for implementation, including proposed regulations, for Proposition E, which was passed by the voters in the November 2003 general election and became effective December 5, 2003. The proposed regulations will clarify issues related, but not limited to, post-employment restrictions and gifts from subordinates. Staff reports on the proposed regulations will be available from the Commission office and on its web site on Thursday, January 8, 2004. (Discussion and possible action.)

VIII. Consideration of what type of commemoration/celebration the Ethics Commission should have to mark its tenth anniversary and its accomplishments, and to review its early accomplishments and future direction(s); and when such a commemoration/celebration should be scheduled. [The voters approved a Charter amendment in November 1993 creating the Ethics Commission.] (Discussion and possible action.)

IX. Consideration of possible amendments to Article XI of the Commission's By-laws to prohibit the Ethics Commission or any member of the Commission from making statements to the media about a fellow sitting commissioner, and to provide for enforcement of such a prohibition. (Discussion and possible action.)

X. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings.

XI. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

XII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: pending litigation.

XIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XIV. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the SF Admin. Code) or to report a violation of the ordinance, contact Donna Hall, Sunshine Ordinance Task Force, City Hall, Room 409, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4683. Telephone: (415) 554-7724; Fax: (415) 554-7854; E-mail: Donna_Hall@ci.sf.ca.us. Copies of the Sunshine Ordinance can be obtained from the Sunshine Task Force, the San Francisco Public Library and on the City's web site at www.ci.sf.ca.us

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Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct. Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300; fax (415) 581-2317 and web site www.sfgov.org/ethics.

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Ethics Commission >> Meeting Information

Ethics Commission

January 12

(Approved 2/9/04)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

January 12, 2004, 5:30 p.m.

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1. **Call to order and roll call.**

Chairperson Robert R. Planthold called the meeting to order at 5:39 p.m.

COMMISSION MEMBERS PRESENT: Robert Planthold, Chairperson; Michael Garcia, Vice-Chairperson; Waukeen McCoy, Commissioner; Michele Anglade, Commissioner; Joe Lynn, Commissioner.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Shaista Shaikh, Public Finance Administrator; Oliver Luby, Fines Collection Officer.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Dawn Kamalanathan, Mayor's Budget Office; David Wong, President of Deputy Sheriffs Association; Anita Mayo, Pillsbury Winthrop; Marc Salomon; other unidentified members of audience.

MATERIALS DISTRIBUTED:

Revised Agenda for Meeting of January 12, 2004

Executive Director's Report (with Revenues Attachment) for the Meeting of January 12, 2004

Approved Minutes of Meeting of October 14, 2003

Approved Minutes of Meeting of November 10, 2003

Draft Minutes of Meeting of December 8, 2003

Revised Draft Minutes of Special Meeting of October 3, 2003

December 4, 2003, Memo from Ginny Vida re: Proposed regulations related to public financing provisions of CFRO

January 7, 2004, Ethics Commission 2003-2004 budget, with attached 2004-2005 draft budget

Draft 2004-2005 Sufficiency Budget

Commissioner Joe Lynn's Proposed 5.5% 2004-2005 budget

Commissioner Joe Lynn's Proposed 20.5% 2004-2005 budget

January 8, 2004, Memo from Ginny Vida re Action Item VII: Regulations Related to S.F. Campaign & Governmental Conduct Code Sec. 3.234: Post Employment Restrictions

January 8, 2004, Memo from Ginny Vida re Action Item VII: Regulations Related to S.F. Campaign & Governmental Conduct Code Sec. 3.216(c): Gifts from Subordinates

San Francisco Campaign and Governmental Conduct Code, Article III, Chapter 2, Conflict of Interest and Other Prohibited Activities (unofficial version 1.04)

Ethics Commission Memo on: Additional Possible Regulations Related to Article III, Chapter 2 of the San Francisco Campaign & Governmental Conduct Code

January 12, 2004, Memo from Ginny Vida re Action Item X: Whether a Proposed Ballot Measure Will Have a Material Financial Effect on the Sheriff

Letter from John Arntz, Director of Elections, with attached March 2, 2004, ballot measure, Proposition F, received by the Ethics Commission on January 8, 2004

Ethics Commission's Amicus Curiae Brief in *People of the State of California v. Hector J. Chinchilla*, filed December 29, 2003, by the City Attorney's office

The San Francisco Ethics Commission Manual on Government Ethics Laws

January 8, 2004, Memo from Ginny Vida re: Possible Future Agenda items

- **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

There was no public comment.

1. **Approval of the minutes of the Ethics Commission meetings of December 8, 2003, and special meeting of October 3, 2003.**

Motion 04-01-12-1 (Garcia/Lynn): Moved, seconded, and unanimously passed (5-0): that the minutes of the Ethics Commission meetings of December 8, 2003, be approved as drafted.

Regarding the special meeting of October 3, 2003, the minutes of which has not yet been approved in their entirety, Commissioner Michele Anglade requested that all the votes in the closed session be recorded.

Motion 04-01-12-2 (Anglade/Lynn): Moved, seconded, and unanimously passed (5-0): that the staff of the Ethics Commission make a summary of the votes taken during the closed session of meeting of October 3, 2003.

Motion 04-01-12-3 (McCoy/Garcia): Moved, seconded, and unanimously passed (5-0): that the decision of whether to approve the minutes of the special meeting of October 3, 2003, be tabled pending the Commission's receipt of an addendum on the votes of the closed session.

IV. Proposed regulations for implementation of the recent amendments to the Campaign Finance Reform Ordinance. Proposed regulations will clarify ambiguities related to, but not limited to, the public financing program, expenditure and contribution limits, filing requirements, and use of campaign funds. This item was continued from the December 8, 2003 meeting. A staff report is available from the Commission office and on its web site. (Discussion and possible action.)

Commissioner Joe Lynn asked whether, under proposed Regulation 1.104, cash can be considered a qualifying contribution; if so, he suggested requiring employer information to ensure that the cash contribution was from a resident of San Francisco. Public Finance Administrator Shaista Shaikh explained that under local law cash contributions can be qualifying or matching contributions. Ms. Shaikh noted that under state law, cash contributions of $100 or more are not permitted. Ms. Shaikh

explained that staff established safeguards with respect to cash contributions that are to be matched with public funds. Staff requires verification of San Francisco residency as well as detailed contributor information.

Commissioner Lynn suggested that the Consumer Price Index (CPI) adjustments in proposed Regulation 1.116-1 be rounded to the nearest $5,000, rather than $1,000, as such changes to the loan limit would be easier to remember. Executive Director Ginny Vida asked whether rounding off to the nearest $5,000 was not close enough to the intent of the law. Deputy Executive Director Mabel Ng said that the law does not say anything about rounding off the CPI adjustments and explained that staff used $1,000 in proposed regulation 1.116-1, and $100 in another proposed regulation because if you use too high a number for rounding off, no change may result because the CPI adjustments are usually small.

Commissioner Lynn asked what would happen if a statement of participation or non-participation, discussed in proposed regulation 1.142, was not filed and there was an expenditure ceiling issue, noting that non-participants could lift the ceiling for others. Ms. Shaikh said that the law had been amended and that non-participating candidates who had agreed to accept the spending limit would not cause the ceiling to be lifted if they received contributions in excess of the spending limit.

Commissioner Lynn asked whether there was any supplemental reporting requirement for candidates who do not seek public financing. Ms. Shaikh explained the requirements as set forth by Section 1.152 of CFRO and Ethics Commission Regulation 1.152-1.

Commissioner Lynn provided an example of the proposed regulations related to public

financing. He said that if the Election Campaign Fund had $1 million, and there were 30 participants each qualifying for $50,000, $1.5 million would be needed to fund the participants fully. The Executive Director would be required to declare that the funds are insufficient and a pro-rated amount would be reserved for each qualifying candidate. Commissioner Lynn expressed his concern that based on experience, every participant does not qualify for the maximum. Thus, if the average amount qualified for is $25,000, then the $1 million fund would be sufficient. Under pro-ration however, candidates qualifying for more than the pro-rated amount would not get additional available money even if some was left over. Commission Lynn said that the program needed to assure that available money is given to candidates. Ms. Ng noted that the Executive Director can modify assumptions related to pro-ration based on facts and circumstances, and that the Commission itself makes a final determination about pro-ration no later than 60 days before the election. Commissioner Lynn said that he had some problem leaving the decision to the period during the election, when the Commission has a lot to do. Ms. Vida and Chairperson Planthold stated that in their view, Commissioner Lynn was projecting a problem beyond the available experience. Commissioner Lynn noted that staff had estimated 25 participants, not counting District 2, which could account for about 5 more, and that those projections, if correct, will raise this problem with the regulation.

Commissioners Lynn and Garcia complimented Ms. Shaikh on her preparation and excellent management of the program.

Motion 04-01-12-4 (Anglade/Garcia): Moved, seconded, and passed (4-1) (Lynnopposing): that the proposed regulations related to the Campaign Finance Reform Ordinance be approved and referred to the Board of Supervisors.

Commissioner Lynn clarified that he opposed approval of the regulations only due to his concerns about the CPI adjustments and the pro-ration problem.

[The Commission next discussed Item VI, the proposed budget, before Item V, the Executive Director's report.]

V. Executive Director's report

Executive Director Vida referred the Commission to her written report. She noted that she was retiring from her position on June 1, 2004, and that a search process for replacing the Executive Director was needed. Ms. Vida said that her position could be filled as early as July 1 and that there would be savings in the interim period due to her being off payroll. Commissioner Garcia asked if the Deputy Executive Director would get a raise during the interim period for assuming the Executive Director's duties. Ms. Vida said that she would need to check with the Department of Human Resources. Commissioner McCoy asked if such a raise would affect the estimated savings from Ms. Vida's absence as indicated in the report. Ms. Vida said she thought that it would affect savings for one month.

Regarding legislative developments, Chairperson Planthold noted that a reporter had called for comment on legislation related to permit expeditor registration, reintroduced by Supervisor Daly. Commissioner Garcia asked if funds would become available if the proposal was passed and the Ethics Commission were made the filing officer. Ms. Vida said that the Commission could recommend adding additional funds to the budget when the proposal comes before the Commission. Chairperson Planthold said that voters have approved various unfunded mandates. Commissioner Garcia wondered if the Commission would be out of line to request funding regarding the proposed legislation.

Ms. Vida reported that she, Ms. Ng, and Chairperson Planthold attended a planning meeting for the next annual Council on Governmental Ethics Laws (COGEL) conference, which San Francisco will be hosting December 5 - 8, 2004. She said that

the Program Committee accomplished a lot, identifying the workshops that will be held and setting priorities for plenary speakers. Ms. Vida said that members from out of town were very pleased with the Holiday Inn - Golden Gate, which has a very reasonable room rate ($109/night) and is centrally located. Committee members also had a wonderful dinner at the Empress of China Restaurant, which will be the site for the awards dinner, with a per person rate of $35, compared to last year's $80. Ms. Vida also expressed concern that the Commission would be hosting the conference during a year when it is experiencing budget cuts; she added that the Commission needs to make a pitch for additional funding.

Chairperson Planthold said that display technology, such as slide projectors and equipment for power point, would be an issue, as COGEL does not have money to rent equipment and cannot realistically expect to borrow equipment from various city agencies because of liability issues. He reported that he sent a lengthy email with questions to Steve Kava, the Mayor's Chief of Staff, to request assistance. He also said that commissioners may need to use their prestige to help obtain grants for the event. He added that the conference often asks the mayor of the hosting city to make some opening remarks and that Mayor Newsom was aware of this fact.

Commissioner Lynn requested that a copy of the letter requesting written advice that was identified in the ED report be provided to the commissioners.

Regarding Item 14, the Executive Director's retirement, Commissioner Anglade thanked and commended Ms. Vida for her many years of service.

Regarding Item 13, Commissioner Garcia asked if the Commission could buy a copy of Bruce Petit's interview of Chairperson Planthold and make it available to the commissioners. Ms Vida said that Ms. Ng had a DVD recording of the interview.

VI. Proposed budget for the Ethics Commission for FY 03-04 and FY 04-05. The Commission will consider two possible budgets: (a) a proposed FY 04-05 budget that meets the Mayor's instructions to reduce spending by 5.5% and an additional contingency amount of 15%; and (b) a proposed FY 04-05 sufficiency budget that would enable the Commission to fulfill its mandates. Draft reports on the proposed budgets will be available from the Commission office and on its web site. (Discussion and possible action.)

Ms. Vida noted that the Commission must finalize a budget satisfying general fund reductions of 5.5% (about $32,000) as well as be prepared to make an additional 15% contingency cut (about $83,000). Dawn Kamalanathan of the Mayor's Budget Office said that the latter was necessary due to a $140 - 340 million city-wide budget problem in FY 04-05, most of which is dependent upon the state budget. Referring to "Overview of General Fund Targets" sheet contained in the Ethics Commission 2003-2004 budget handout (with attached 2004-2005 draft budget (long sheets)), Ms. Vida explained how those targets would be reached. She said that the savings from keeping the 1426 (campaign finance assistant) and 1820 (assistant investigator)

position classes vacant (which includes their benefits) and from eliminating temporary salaries in the amount of $18,179 will reach these goals. Ms. Vida noted that Ms. Kamalanathan had helped to prepare the draft FY 04-05 budget (attached long sheets) and also acknowledged Commissioner Lynn and Chairperson Planthold for their assistance.

Ms. Kamalanathan reported that the Ethics Commission is facing a $51,000 projected salary deficit in the current fiscal year. She said that she had worked with the Ethics Commission staff to create a balancing plan. Due to savings from the Executive Director's and Campaign Finance Officer's vacancies, savings from the enforcement fund, Department of Telecommunications and Information Services ("DTIS") savings, and a correction in temporary salaries, the Commission will eliminate the projected salary deficit. In addition, the Commission would be able to backfill two vacant positions, the 1823 (investigator/legal analyst) and 1844 (campaign finance officer), and maintain a small amount of money for temporary salaries.

The Commissioners asked about the differences between the Proposition (Prop) O[1] budget and "non-Prop O" (general) budget for FY 04-05. Ms. Kamalanathan stated that the Prop O budget was being treated separately because the Election Campaign Fund is exempt from targeted cuts. Commissioner Lynn noted that the law provides that up to $2 per resident be appropriated to administering the public financing program, which would be about $1.55 million.

Chairperson Planthold asked why there were such large changes to amounts in attrition savings and step adjustments. Ms. Kamalanathan explained that every department's attrition savings and step adjustments decrease the amount of money available with which to hire and pay employees (both are negative values). She said that last year, the Ethics Commission noticed that the attrition savings was a positive number, meaning that attrition was in reverse and the pinch of the high step adjustments was not felt. To balance the high attrition savings amount, the size of the step adjustments was increased to an even greater negative number. When notified of the attrition savings number error, the Controller's office corrected the attrition savings number by making it a negative number but did not also reduce the step adjustments number to a smaller negative. Ms. Kamalanathan stated that next year's budget was starting with a clean slate and that the step adjustments number was now dramatically closer to zero.

When asked why there was a drop in the budget for supplies, Ms. Kamalanathan stated that the drop reflected actual past spending. Regarding professional and specialized services regarding the non-Prop O budget, Chairperson Planthold said that budgets for the enforcement fund ($10,000) and independent contractor ($2,500) were too high, as the Commission only used about $4,700 in the past year's enforcement fund for outside counsel. He added that having an independent contractor draft the Commission's annual report was perhaps unnecessary. He asked about travel costs paid to employees, a $1,500 line-item, noting that the COGEL conference was located in the City next year. Ms. Vida said that the funds would be used to pay for conference registrations, and although the description of those funds could be changed, Ms. Kamalanathan indicated that that would not be necessary. Regarding the Chair's comments, Commissioner McCoy added that deposition costs are

very expensive, about $1,000 per deposition. Regarding the independent contractor, Ms. Vida said that that money was well spent.

Commissioner Lynn noted that the effect of this budget proposal was to cut the currently staffed Campaign Finance Assistant, who handles campaign finance and statement of economic interest filings. He said this person provides services to the public, answers phones, logs 2500 documents a year into a complicated software program, and provides support to the Fines Collection Officer and Campaign Finance Officer. Commissioner Lynn said that the Campaign Finance Officer spends only half of his or her time on campaign finance issues, with three months out of the year being reserved for the budget and payroll as well as personnel officer duties. He noted that the only other member of the campaign finance team is the Fines Collection Officer, who is not supposed to provide general campaign finance service to the public lest fines revenues be depressed, and that staff's proposed budget would cause fines collections to spiral down. Commissioner Lynn emphasized that the Commission should not cut programs that work in order to fund programs that do not work. He said that he believes that there are serious problems with the enforcement program and raised the question of how many depositions and serious cases, other than the Kamala Harris matter, had enforcement handled in the past eight years. Commissioner Lynn added that the enforcement staff does not recognize enforcement problems, which are a kind of white collar crime. Noting that he has 20 years of experience dealing with commercial legal cases, he proposed suspending the enforcement division and obtaining around $20,000 in the budget to find a former FBI agent or someone at the Department of Justice (DOJ) to review enforcement to see what it takes to do the job of a law enforcement agency. Commissioner Lynn stated that he had made approaches to the DOJ on the subject and said that it might be possible for the DOJ to loan someone to the Commission who would help set up a new enforcement program. Upon completion of a review, he noted that the Commission could then go the Mayor and the Board of Supervisors with an understanding of how to properly set up the enforcement program. Also, he noted that if enforcement was suspended, the Commission could hire a permanent campaign finance assistant and end up with surplus funds.

Chairperson Planthold said that Commissioner Lynn was introducing extensive material without advanced notice and that it would be helpful if the Commissioners could get a handout on the proposal. Commissioner Lynn said that he had brought handouts related to his 5.5% and 20% budget proposals for FY 04-05, and passed them out. Chairperson Planthold said that Commissioner Lynn's presentation was wandering and undermining the staff's presentation. Ms Vida said that she thought that the proposal to suspend enforcement is neither rational nor reasonable. Commissioner Lynn said that he wanted to continue with his presentation. Commissioner Garcia said that Commissioner Lynn was arguing with Ms. Vida, which was not enlightening to the other commissioners. Commissioner Garcia said that the figures in Commissioner Lynn's handouts were meaningless, that he was unable to make a reasoned decision on them, and that Commissioner Lynn's arguments would sink on the basis that they were dominating time on material that was new to the Commission. Commissioner Garcia said he has spent many hours studying staff's materials to prepare for the meeting and asked that Commissioner Lynn provide written materials and suggested motions to the other commissioners in advance of a meeting. He said that he mentioned this just as a procedural matter and hoped that Commissioner Lynn did not find his comments disparaging. Commissioner Anglade agreed with Commissioner Garcia. Chairperson Planthold suggested providing a memo that would compare the differences between the two proposals, side by side.

Commissioner Lynn noted that he had not obtained staff's numbers until the past Wednesday (January 7, 2004) and said he accepted Commissioner Garcia's comments in the spirit that they were offered.

Noting that the Campaign Finance Assistant handles the SEI program, Commissioner Lynn asked Ms. Vida who would handle it after that position is vacant. Ms. Vida said that she would oversee the SEI program and receive assistance from staff. Commissioner Lynn asked which staff would assist her and Ms. Vida said that she would decide that later. Commissioner Lynn replied that the SEI program will have significant problems. Ms. Vida said that the Commission did not have approval to hire people in all of the vacant positions because of the Mayor's direction to balance the budget. She said that the Commission was in a budget crisis, as were all other departments, and that she hoped that the Board might restore some of the Commission's funds during the add-back process. She said that she would consider how to redeploy existing staff to accomplish the Commission's tasks.

Commissioner Lynn said his problem with the Prop O Budget was that it had only one auditor and that the audit pool was going to increase next year. Ms. Vida said that they will have the same level of auditing staff next year as they had this year (two staff). Commissioner Lynn said that the second auditor will be non-Prop O. Ms. Vida said that that auditor would be assisting with Prop O. Commission Lynn said that, in that case, Prop O should be paying for that assistance and that the Commission required a non-Prop O audit function. Commissioner Lynn said that the completion of eight Prop O audits was done at the expense of the non-Prop O audits.

Commissioner Lynn asked if there would be any step increases. Ms. Kamalanathan said that would be worked out with the unions.

Commissioner Lynn noted that projected campaign finance revenues for FY 04-05 were set at $104,000 and that that number was already high for the current fiscal year. Ms. Vida said that the Commission could see what revenues the next couple of months would bring in and that it was premature to forecast. Commissioner Lynn said that a straight-line projection from current campaign finance collections (about $32,000 in the first 6 months) results in about $64,000, meaning that the current projection is $40,000 over the target. He further said that, if the Campaign Finance Assistant is cut, campaign finance collections will be cut because the Fines Collection Officer will have to assume other duties, such as answering phones, filing statements of economic interest, etc. Ms. Vida said that those duties would be handled by the same staff who handled them before the Commission had the positions at issue. Commissioner Lynn replied that that was in 1997. Commissioner Lynn asked Fines Collection Officer Oliver Luby about campaign finance collections projections. Mr. Luby affirmed Commissioner Lynn's straight-line projection and said that another way to estimate collections is to compare current collections to what was collected by the same mid-way point during last fiscal year and proportionally project based on last year's final collections; the latter method results in a projection of about $80,000 in final collections for FY 03-04. In addition, Mr. Luby noted that the departure of the Campaign Finance Officer has put some burdens on him, due to time used in assisting the public. Commissioner Lynn said that the Commission had originally estimated around $84,000 for campaign finance collections for the current fiscal year and added

an additional $20,000 due to an increase in electronic fines from $10/day to $25/day. However, due to the lack of fines provisions for odd-numbered year electronic pre-election reports, Commissioner Lynn said that the $20,000 was illusory. He asked staff to take a hard look at those numbers so that Harvey Rose, the Budget Analyst, would not bounce out the projection. Ms. Vida said that she was prepared to make a forceful presentation on the budget.

Chairperson Planthold had Ms. Vida clarify for the public that "Campaign Disclosure Fees" (See FY 04-05 draft budget) consists of campaign disclosure late fines and contribution forfeitures for missing contributor information and that "Other Ethics Fines" consists of fines imposed through the settlement of enforcement matters. He also asked what the basis was for campaign consultant registration fees and fines decreasing. Ms. Kamalanathan said the adjusted numbers were based on actual numbers.

Motion 04-01-12-5 (Anglade/Garcia): Moved, seconded, and passed (5-0): that the discussion of the proposed budgets for FY 03-04 and 04-05 be postponed until another meeting.

Commission Lynn said the complexity of the budget numbers was why he had made a suggestion during the December meeting to establish a committee to go through them and hash them out. Commissioner Lynn suggested that that may be the best way to handle it before the January 26th meeting and Chairperson Planthold said that they would see about that.

[After covering Agenda Item's VI and then V, the Commission went to Item X, followed by Item VII and the remainder.]

VII. Plans for implementation, including proposed regulations, for Proposition E, which was passed by the voters in the November 2003 general election and became effective December 5, 2003. The proposed regulations will clarify issues related, but not limited to, post-employment restrictions and gifts from subordinates. Staff reports on the proposed regulations will be available from the Commission office and on its web site on Thursday, January 8, 2004. (Discussion and possible action.)

Regarding Campaign and Governmental Conduct Code Section 3.216(c), Ms. Ng said that the purpose of this law was to prevent officers or employees from soliciting gifts from subordinates, such as through coercion. The proposed regulation, which is drawn from state and federal standards, provides exceptions for gifts that are voluntary or that relate to traditional circumstances. Gifts of non-cash items worth less than $20, gifts of shared food, gifts of personal hospitality, gifts of special personnel significance, such as for weddings, and gifts given when a supervisorial relationship ends would be specifically exempt from the prohibition.

In response to Commissioner Garcia's question about departments' own rules, Ms. Ng said that departments may have stricter rules but that the proposed regulations would be the floor. She noted that some departments have an absolute ban on all gifts.

Motion 04-01-12-7 (Garcia/Lynn): Moved, seconded, and passed (5-0): that the Commission adopt staff's proposed regulation related to San Francisco Campaign & Governmental Conduct Code Section 3.216(c), Gifts from Subordinates.

Ms. Ng said that the purpose of the post-employment restrictions in Section 3.234 was to prevent public officials or employees from advancing private issues at public expense. She described three ways in which the law reaches that goal. First, there is a permanent ban on working on matters with which the employee was personally and substantially involved while with the City. Second, there is a one-year ban on former employees attempting to influence, on behalf of another person, their former department. Third, former city employees may not be employed or receive compensation from entities that entered into a contract with the City within 12 months before the employee left City service. Ms. Ng noted that staff received public comment during an interested persons meeting and made some adjustments based on the input received.

Chairperson Planthold stated that there is a proposed regulation on waivers, which might be important when a public body requires a member to be of a particular professional category. Ms. Ng noted that requests for waiver must in writing and made to the former officer's department, that waiver decisions must be done publicly, and that the Commission can delegate waiver authority to the Executive Director. She explained a procedure by which the Commission could overturn the Executive Director's decisions on specific waivers. Commissioner Lynn asked if it would be appropriate to charge a fee for processing these requests for waiver. Ms. Ng said that was not provided for in the law.

Commissioner Anglade said that she was concerned about the waiver regulation and wondered if might make more sense for the department to request the waiver rather than the former officer. Ms. Ng said that the Commission had considered that idea at the time the law was proposed and rejected it because the Commission thought it would be impractical. Commissioner Anglade noted that the former employee might not be aware of the post-employment restrictions. Ms. Ng said that the issue of communication depended upon the circumstances and noted, for example, that calling a former boss for information was not a problem. Also, Ms. Ng said that there had been post-employment restrictions prior to the new law and that Commission had issued an updated government ethics manual that addresses post-employment restrictions. Ms. Vida said that the Commission could think about other ways to do outreach on the issue and noted that the Commission really needed an educator position. Commissioner Garcia suggested including post-employment restrictions in the yearly Sunshine presentation.

Anita Mayo of the Pillsbury Winthrop law firm commented. First, on p. 5 of the memo, she noted that there was a typo and that "Section 3.234(a)(2)(4)" should read "Section 3.234(a)(2)(A)." She also noted that there had been changes under the definition of a "unit of government" (p. 11 in memo). Specifically, the definition included both the department that the employee directly served as well as any other unit subject to the direction and control of that department. Ms. Mayo said that it would be helpful to include additional examples. Ms. Mayo also said that, under the definition of "purposefully and substantially" on p. 14, the inclusion of a subordinate makes the regulation more complex, with the result that the public will have to ask for advice on who is subject to the restriction. Commissioner Garcia commented that it would be hard to imagine how a subordinate could not be involved. Ms. Mayo said that it would be difficult if you had a hundred subordinates. Commissioner Garcia said that it seemed to err on the side of caution. Ms. Mayo said that she was just advocating for simplicity.

Motion 04-01-12-8 (Garcia/McCoy): Moved, seconded, and passed (5-0): that the Commission adopt staff's proposed regulations related to San Francisco Campaign & Governmental Conduct Code Section 3.234, Post Employment Restrictions, including amending the typo as suggested by Anita Mayo.

VIII. Consideration of what type of commemoration/celebration the Ethics Commission should have to mark its tenth anniversary and its accomplishments, and to review its early accomplishments and future direction(s); and when such a commemoration/celebration should be scheduled. [The voters approved a Charter amendment in November 1993 creating the Ethics Commission.] (Discussion and possible action.)

Chairperson Planthold announced that there were no new developments on this item.

IX. Consideration of possible amendments to Article XI of the Commission's By-laws to prohibit the Ethics Commission or any member of the Commission from making statements to the media about a fellow sitting commissioner, and to provide for enforcement of such a prohibition. (Discussion and possible action.)

This agenda item was postponed to a later meeting because there was no proposed text or materials.

X. Consideration of the request of the Department of Elections for a determination by the Ethics Commission, under Charter section 13.104.5, whether a proposed ballot measure to reclassify deputy sheriffs so that they are subject to the same rules for labor negotiations as uniformed members of the Police and Fire Departments will have a "material financial effect" on the Sheriff or uniformed personnel of the Sheriff's Department. (Discussion and possible action.)

Ms. Ng referred the Commission to staff's January 12th memo on this item and noted that the Department of Elections had asked if, under S.F. Charter Sec. 13.104.5, Proposition F will have a "material financial effect" on the Sheriff or uniformed personnel of the Sheriff's Department. To consider "material financial effect," staff looked to the California Political Reform Act (PRA), which is incorporated in local law. Public officials are disqualified from participating in government decisions when it is reasonably foreseeable that the decision will have a material financial effect on the official's economic interests. However, a decision affecting the salary of a public official is not deemed material under the PRA. Alternatively, Ms. Ng also said that staff considered whether the ballot measure would have an effect on the Sheriff or Sheriff's deputies significant enough to interfere with their duties of loyalty. She noted that the ballot measure would allow the deputy sheriffs to delay negotiating their labor agreements until other negotiations were concluded, possibly resulting in favorable treatment of the deputy sheriffs. Such a financial effect was precisely the type of effect that voters were concerned about. However, Ms. Ng pointed out that the financial effect did not rise to the level of being material because the deputy sheriffs must still negotiate with the City & County and so any changes in wages, benefits, and working conditions would be speculative.

David Wong, President of Deputy Sheriffs Association, testified and asked that the deputy sheriffs be allowed to continue doing their job regarding elections. Mr. Wong said that the San Francisco deputy sheriffs are the only deputy sheriffs in California classified as miscellaneous employees rather than public safety employees. He said that the ballots were very secure.

Commissioner Garcia asked Mr. Wong how it would affect the deputy sheriffs if it were decided that they should not handle the ballots and asked whether it was an integrity issue. Mr. Wong answered that there was no downside to the deputies not being the ones to safeguard the ballots and said there would be no bad feelings if that was decided.

Commissioner Garcia added that this issue was different from a previous one also involving the question of whether a ballot measure had a material financial effect on the sheriffs. Commissioner Anglade said that the she saw less of a conflict with the current issue and also said that Ms. Ng had done great work.

Chairperson Planthold said that it was unrealistic to think that any bargaining unit would get away with a request that others would not get away with. He said he did not see how the deputy sheriffs could be induced to do other than their lawful, sworn duty. He added that electronic registration is carried on separately, as a double check against any tampering with the ballots.

Motion 04-01-12-6 (Garcia/McCoy): Moved, seconded, and passed (5-0): that the Commission adopt staff's recommendation and find that the financial effect of the proposed ballot measure does not rise to the level where it would interfere with the ability of the Sheriff or deputy sheriffs to perform their duties of transporting

and safeguarding ballots.

[Because he was not feeling well, Chairperson Planthold turned the meeting over to Vice-Chairperson Garcia and departed at 8:45 p.m.]

XI. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings.

Vice-Chairperson Garcia called for suggestions for the agenda. Commissioner Anglade asked for advice on the issue of recusal.

Vice-Chairperson Garcia said that he would prefer to see a more democratic approach for getting items on the agenda and said that the current process seemed a little selective. He said that there were things he had been trying to get on the agenda for several months.

Ms. Mayo said that the Commission may want to consider whether there is inconsistency in the law between the Section 3.216(b) (general gift restrictions), which prohibits gifts in excess of $100 from a restricted source in the past 12 months, and the lobbying law, which prohibits gifts from lobbyists in excess of $50 within three months of a lobbyist contact.

Commissioner Lynn mentioned that there is no state-law authorized administrative fine process for late filed campaign reports required by Campaign and Governmental Conduct Code Section 1.135 and that the only way to handle late filing of reports required under that section was through the enforcement process. He proposed a stream-lined enforcement process. He added that under 1.135, the Commission can require electronic filing but does not have to; he wanted that loophole closed.

Marc Salomon said that he was concerned that there was an ethics regulation that

violated the Campaign Finance Reform Ordinance. The regulation allows campaigns to raise in excess of the $250 runoff contribution limit if they have debt from the general election. Mr. Salomon said that this loophole needed to be closed. Vice-Chairperson Garcia said that he thought he had raised this issue previously. Ms. Vida said that she had not seen it in the minutes. Commissioner Lynn said that it was in a discussion on a request for advice from former Supervisor Alioto on the issue.

Commissioner Lynn said that he did not think that it was the intent of the initiative process to allow corporations to be able to put propositions on the ballot. He said that initiatives were a people's measure. Consequently, he said that the Commission should consider contribution limits, such as a $10,000 limit, so as to return the initiative process to the people.

XII. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

The Commission convened to a closed session at 8:54 p.m.

XIII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: pending litigation.

The Commission reconvened to open session at 9:40 p.m. Vice-Chairperson Garcia announced that the Commission, by a 4-0 vote (Planthold absent) in closed session, accepted $750 from Respondent Dewey Square Group, in settlement of Complaint No. 46-021122.

XIV. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no further public comment.

XV. Adjournment.

The Commission adjourned its deliberations at 9:45 p.m.

Motion 03-01-12-7 (McCoy/Anglade): Moved, seconded, and unanimously passed (4-0): that the January 12, 2004, meeting of the Ethics Commission be adjourned.

Respectfully submitted,

Oliver Luby

Fines Collection Officer
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[1] Proposition O, or Fair Elections Ordinance, was a series of amendments to the Campaign Finance Reform Ordinance adopted by the voters and effective on January 1, 2001. Among other provisions, it included established a system for the partial public financing of candidates running for the Board of Supervisors.

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Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
JANUARY 26, 2004, 5:30 P.M.
and AGENDA

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Room 421 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Proposed budget for the Ethics Commission for FY 03-04 and FY 04-05. This item was continued from the January 12, 2004 meeting. The Commission will consider two possible budgets: (a) a revised proposed FY 04-05 budget that meets the Mayor's instructions to reduce spending by 5.5% and an additional contingency amount of 15%; and (b) a revised proposed FY 04-05 sufficiency budget that would enable the Commission to fulfill its mandates. Draft reports on the proposed budgets will be available from the Commission office and on its web site. (Discussion and possible action.)

IV. Consideration of legislation proposed by Supervisor Daly to require registration of permit expediters. A copy of the proposed legislation and a staff report will be available from the Commission office and on its web site on Thursday, January, 22, 2004.

V. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings.

VI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

VII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

Revised 1/22/04

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
JANUARY 26, 2004, 5:30 P.M.
and AGENDA

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Room 421 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Proposed budget for the Ethics Commission for FY 03-04 and FY 04-05. This item was continued from the January 12, 2004 meeting. The Commission will consider two possible budgets: (a) a revised proposed FY 04-05 budget that meets the Mayor's instructions to reduce spending by 5.5% and an additional contingency amount of 15%; and (b) a revised proposed FY 04-05 sufficiency budget that would enable the Commission to fulfill its mandates. Draft reports on the proposed budgets will be available from the Commission office and on its web site. (Discussion and possible action.)**

IV. **Consideration of legislation proposed by Supervisor Daly to require registration of permit expediters. A copy of the proposed legislation and a staff report will be available from the Commission office and on its web site on Thursday, January, 22, 2004.**

V. **Review and discussion of Ethics Commission policies on retention/deletion of written/electronic records and on the decision process for making such determinations as to retention or deletion; review and discussion of how California Public Records Act affects such policies; and consideration of possible revision of Ethics Commission policies on these matters.**

VI. **Commissioner questions and proposed future agenda items.**

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings.

VII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

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Ethics Commission

January 26

(Approved 3/8/04)

Minutes of the Special Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 263

January 26, 2004

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I. **Call to order and roll call.**

Chairperson Robert Planthold called the meeting to order at 5:35 p.m. He announced that Executive Director Ginny Vida was on medical leave until February 6, 2004.

COMMISSION MEMBERS PRESENT: Robert Planthold, Chairperson; Michael Garcia, Vice-Chairperson; Michele Anglade, Commissioner; Joe Lynn, Commissioner; Waukeen McCoy, Commissioner.

STAFF PRESENT: Mabel Ng, Deputy Executive Director; Shaista Shaikh, Public Finance Administrator.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: David Pilpel; Charlie Marsteller; Marc Salomon; Pat Murphy, Gilbert Criswell; Bob Coleman; Anita Mayo, Pillsbury Winthrop; other unidentified members of the public.

MATERIALS DISTRIBUTED:

Agenda for Meeting of January 26, 2003

January 22, 2004 Memorandum from Ginny Vida regarding Revised Draft Budget for FY 04-05 with attached 2004-2005 draft budget

Joe Lynn's Budget Talking Points, January 26, 2004

January 22, 2004 Memorandum from Ginny Vida regarding Proposed Legislation to Regulate Permit Expediters

Ethics Commission Records Management Policy

Announcement regarding workshop to be held on January 30,2004, for candidates running for the Board of Supervisors in November 2004

San Francisco Examiner article, *Ethics Chief, Destroyed Docs and Allegations*, dated January 22, 2004

San Francisco Sentinel article, *District Attorney should investigate Ethics Department*, dated January 22, 2004

San Francisco Sentinel article, *Ethics Chief Orders Newsom Documents Destroyed*, dated January 20, 2004

San Francisco Chronicle article, *Probe Opened Over Newsom Papers*, dated January 22, 2004

II. Public comment on matter appearing or not appearing on the agenda that are within the jurisdictions of the Ethics Commission.

David Pilpel stated that attachments pertaining to items 3 and 4 of the January 26 meeting were not posted to the Commission's web site. Marc Salomon questioned the true reason for Ms. Vida's absence from the Commission meeting. Mr. Salomon expressed concern that the interest of San Franciscans was being put aside for wealthy individuals. He said that it was critical for the Ethics Commission to investigate Jim Sutton. Chair Planthold clarified that the matter Mr. Salomon referred to was not before the Commission and that the matter is being considered by the Sunshine Task Force. Chair Planthold took exception to Mr. Salomon's comments about Ms. Vida being on medical leave.

Gilbert Criswell, candidate for Democratic County Central Committee, echoed Mr. Salomon's concerns. Mr. Griswell provided one newspaper article to the Commission.

III. Proposed budget for the Ethics Commission for FY 03-04 and FY 04-05.

Chair Planthold noted that the Commission will consider two possible budgets: 1) a revised proposed FY 04-05 budget that meets the Mayor's instructions to reduce spending by 5.5% and an additional contingency amount of 15%; and 2) a proposed FY 04-05 sufficiency budget that would enable the Commission to fulfill its mandates. Chair Planthold noted that Commissioner Joe Lynn prepared a budget alternative.

Public Finance Administrator Shaista Shaikh referred the Commission to the proposed FY 04-05 budget spreadsheets that were attached to the memo dated January 22, 2004 from staff. Ms. Shaikh noted that the revised spreadsheets incorporated some of the comments and changes recommended by Commissioners at the January 12, 2004 Commission meeting. Ms. Shaikh requested that the Commission provide guidance to staff with respect to the amount of public grants and the level of Prop O staffing being proposed.

With respect to the revenue budget, Chair Planthold stated that the Ethics Commission is expected to produce certain amount of revenues to offset its general funding. Chair Planthold asked why the projections varied for campaign consultant registration fees and campaign disclosure fees. Deputy Executive Director Mabel Ng explained that campaign consultant fees were expected to decline in FY 2003-2004 from the previous year because FY 2003-2004 was not a heavy election year. With respect to the campaign disclosure fees, she explained the figures for FY 2003-2004 were provided by the budget officer and those figures were maintained in the proposed budget for FY 2004-2005.

Discussion of Commissioner Lynn's budget alternative

Commissioner Lynn stated that he believed that the Commission needed to form a consensus on the following three issues: 1) whether the enforcement program should continue to be funded; 2) the Commission's organizational efficiency; and 3) the Prop O budget. Commissioner Lynn proposed to discontinue funding for the enforcement program. He called for a review of the enforcement program and recommended that the savings resulting from not funding the program be used for the campaign finance and audit programs. He stated that while the enforcement program is under review, matters could be referred to the District Attorney, City Attorney, Attorney General and the Controller.

Ms. Ng stated that while staff welcomes input on how the Commission can improve its enforcement program, staff does not agree that the enforcement program should be defunded. She noted that in the past, staff has consulted with other enforcement agencies to seek their guidance when appropriate. She explained that: 1) the Charter requires the Commission to have an enforcement program; 2) the Commission has jurisdictional authority over certain laws that no one else can administer; and 3) complaints that are forwarded to the City Attorney, District Attorney and FPPC are not necessarily investigated by those agencies because they do not rise to the level of significance to warrant action by those agencies.

Commissioner Waukeen McCoy expressed his concern about eliminating the enforcement program, stating that it is the Ethics Commission's responsibility to ensure that campaigns act dutifully. He added that the Charter requires the Ethics Commission to investigate certain complaints, and not the District Attorney unless violations rise to the level of criminal acts. He suggested that the Commission discuss how to prioritize complaints, not discuss the elimination of the enforcement program.

Chair Planthold asked whether the Commission could make a policy determination through the budget process. Deputy City Attorney Chad Jacobs explained that by means of the budget process, the Ethics Commission presents its funding request to the Mayor, and added that the Ethics Commission cannot abandon a Charter mandate unless it is not funded. Commissioner Lynn asked whether a request to fund a study of the enforcement program would mean abandonment. Mr. Jacobs stated that if in fact there were no enforcement program, an argument could be made that the program was abandoned. Commissioner Lynn asked about the remedy for not having an enforcement program. Mr. Jacobs stated that not fulfilling a mandate may rise to the level of official misconduct.

With respect to the issue of organization efficiency, Commissioner Lynn presented his proposal as outlined in the Joe Lynn's Budget Talking Points. Commissioner Michele Anglade stated that the organizational issues appear to be concerns of managerial discretion and not budget decisions. She cautioned against restructuring in the absence of the new Executive Director. Commissioner McCoy concurred with Commissioner Anglade. Ms. Ng echoed the concerns of Commissioners Anglade and McCoy. Commissioner Mike Garcia stated that it was not practical to make organizational changes in the midst of the budget process but that it would be worthwhile to conduct such review during the search for an Executive Director.

Commissioner Lynn presented his proposal regarding the Prop O budget. Chair Planthold asked whether funds may be diverted from the grants fund (if the Commission finds that all of the amount in the grants fund will not be required) to pay for a greater level of staffing, as Commissioner Lynn stated. Ms. Shaikh explained that the Commission could not divert funds from the grants fund. Commissioner Lynn stated that Prop O must be fully funded and inquired about the authority under which funds for the program may be blocked. Mr. Jacobs stated that when the City does not have money, the Mayor is not required to approve requisitions.

The Commission directed staff to present alternative proposals.

Public Comment

Mr. Marsteller thanked staff for preparing the sufficiency budget. Mr. Marsteller reported that he studied the Commission's enforcement program and determined that through August 2001, the Commission had three settlements that totaled more than $1700 whereas the FPPC had collected over $400,000 from San Francisco entities and individuals. Mr. Marsteller added that with respect to recent efforts by the Commission to develop its program, Bob Stern explained that it takes five years to fully develop an enforcement program. Mr. Marsteller recommended the centralization of filing systems (i.e., campaign finance, campaign consultant and lobbyist) especially with respect to electronic filings. Mr. Marsteller added that because Prop O audits involve public grants, the law requires concurrent auditing and enforcement.

Mr. Salomon stated when more money is spent, the more likely the person is a criminal and the more likely it is that the person would be set free. Mr. Salomon said that he would seriously consider the measure to abandon the enforcement program.

Bob Coleman concurred with Mr. Salomon and supported Commissioner Lynn's recommendation.

Motion 04-01-26-1 (McCoy/Anglade): Moved, seconded, and passed

(4-1) (Lynn opposing): to continue the discussion of this item to the next meeting.

At 7:30 p.m. the Commission took a ten-minute recess. The Commission resumed its meeting at 7:40 p.m.

IV. Consideration of legislation proposed by Supervisor Daly to require registration of permit expediters.

Chair Planthold asked staff whether the legislation differed from an earlier version that the Commission reviewed in the fall of 2002. Ms. Ng reported that in the fall of 2002, the Commission requested that a funding component be added. She noted that while some changes were incorporated, a funding component was not added. Stating that the legislation has merit, Ms. Ng cautioned that the legislation would take time to implement and administer. She expressed concern that the proposal does not contain funding for the Commission to accomplish the mandated tasks. She directed the Commission's attention to the estimated costs listed on page 2 of the January 22, 2004 memo from staff regarding the proposed legislation.

With respect to the requirement that the Ethics Commission submit a report, as outlined in Section 5.120(d) of the legislation, there was question as to whether the

report is required on an annual basis. Commissioner Lynn noted that the Lobbyist Ordinance exempts permit expediters and recommended that it be amended to include regulation of permit expediters. Chair Planthold noted that Section 5.115(a)-2 was unclear with respect to the timeframe being referred to and as well as the types of employees. He also inquired whether Section 5.115(f) included electronic or digitally stored communications.

Ms. Ng reported that the Rules Committee will consider the legislation on February 4. The Commission directed Ms. Ng to convey the Commission's recommendations to the Rules Committee.

Public Comment

Anita Mayo of Pillsbury Winthrop questioned the need for the legislation. Ms. Mayo stated that permit expediters are currently covered under the Lobbyist Ordinance based on the definition of administrative action. Ms. Mayo stated that the definition of permit expediters was too broad. She noted that under the definition a person who receives money but never communicates with any City employee or officer, nonetheless, would qualify as a permit expediter. Ms. Mayo noted that the legislation would require permit expediters to report for the entire preceding year prior to registration, whereas the obligation to provide information relating to the period prior to registration under the Lobbyist Ordinance is two months. Commissioner Lynn stated that Sections 2.105(k) and 2.105(p) of the Lobbyist Ordinance exempts permit expediters. Ms. Mayo explained that if all permits that were issued dealt with real property that would be true. However, she was not certain whether permits dealt only with real property.

Mr. Marsteller suggested that the Commission ask Supervisor Daly as to why he proposed new legislation rather than amending the Lobbyist Ordinance. Mr. Salomon stated that some reporters had access to special staff and that some candidates may be permit expediters.

V. Review and discussion of Ethics Commission policies on retention/deletion of written/electronic records.

Chair Planthold noted that the Commission's discussion of the item was limited only to a policy review and that the Commission should not prejudice the Sunshine Ordinance Task Force's ("SOTF") consideration of a complaint relating to the Commission that has been filed with the SOTF. Chair Planthold noted that the SOTF will determine on February 10 whether it has jurisdiction over the complaint. Commissioner Lynn stated that the Commission was not precluded from handling the matter of the complaint just because a complaint had been filed with the SOTF.

Ms. Ng provided an overview of the Commission's current records management policy. She noted that the Commission adopted its records management policy sometime ago. She stated that the policy does not mention records mistakenly sent to the Commission and asked whether the Commission wanted to amend the policy to explicitly mention such documents.

Chair Planthold asked whether the Commission should perform a periodic review of its records management policy and emphasized that the discussion of the agenda item be limited to a review of the Commission's records management policy. In response to Commissioner Lynn's question about a determination being made about a document's public purpose or legal significance, Ms. Ng referred to the definition of records as set forth in Section 8.1 of the San Francisco Administrative Code. Ms. Ng added that if a document meets the definition then it must be retained according to the department's policy; if it does not meet the definition, it is not required to be retained. Category 5 of the Commission's policy requires no retention if a document has no legal significance. Commissioner Lynn inquired as to who on staff has authority to destroy documents. Ms. Ng explained that if a document does not fall under the definition of "record," the Executive Director has the authority to destroy the document.

Commissioner Anglade expressed concern that the discussion involved details and facts relating to a specific example. Commissioner Garcia questioned the propriety of becoming involved in depth with a specific issue when there was no hearing before the Commission. Mr. Jacobs explained that the agenda item was to discuss the Commission's policy not a specific example. Commissioner Garcia asked whether the nature of Commissioner Lynn's questions was inappropriate. Mr. Jacobs stated that it was appropriate for the Commission to discuss the policy. It would be inappropriate to discuss whether the law or policy was violated. Commissioner Lynn asked whether it was appropriate to ask staff to present details. Commissioner Garcia asked whether the City Attorney would still maintain that the Commission had not crossed the line even when Jim Sutton's name was mentioned. Mr. Jacobs encouraged the Commission to focus on the agenda item.

Chair Planthold asked the Commission to consider whether its policy is comprehensive enough. Commissioner Anglade stated that the policy could not conceivably be expanded to include all documents.

There was some discussion about the obligations of other prosecutorial agencies. Commissioner Garcia stated that for the Commission to do anything with respect to a specific case would be to pre-judge and be premature. Commissioner Lynn inquired about the penalty for violating Chapter 8 of the Administrative Code. Mr. Jacobs stated that there was no specific penalty but that it can be argued that a violation be considered official misconduct. Commissioner Lynn asked the Chair to request that staff not delete anything.

Public Comment

Mr. Marsteller stated that in cases where documents are not covered by the policy, they should be sealed and the matter should be brought before the Commission.

Mr. Salomon asked questions such as whether staff requests legal advice to determine legal significance, what criteria staff uses to determine legal significance and the amount of time staff spends to authorize deletion of documents.

Mr. Criswell stated that he did not hear anything from staff on the destruction of electronic or written material.

In the event a document is not covered by the policy, Commissioner Anglade asked whether there is some other source to which the Commission should refer. Mr. Jacobs referred to Section B. Records Not Addressed by the Attached Schedule of the policy. Commissioner Lynn asked whether emails were covered by Section B. of the policy. Mr. Jacobs stated that emails are included in the definition of records.

VI. Commissioner questions and proposed future agenda items.

Chair Planthold announced that staff will conduct a workshop on January 30 for candidates running for the Board of Supervisors.

Commissioner Garcia asked that at the February 9 meeting, the Commission discuss the search and evaluation process regarding hiring of an Executive Director. Chair Planthold asked commissioners to recommend topics that need to be explored. Commissioner Garcia noted that former commissioners may be asked to provide their input.

Commissioner Lynn asked for a report from staff on its conduct as he had only read newspaper articles about staff's conduct. Commissioner Lynn recommended that the Commission explore its policy regarding cooperation with other police agencies and provided an example from when he served on staff. Commissioner Anglade asked whether it was just a matter of staff policy. Commissioner Garcia stated that Commissioners cannot direct staff or become involved in personnel matters. Commissioner Anglade expressed concerns about Commissioner Lynn's request for a staff report. Commissioner McCoy echoed Commissioner Anglade's concern about the appropriateness of a staff report.

VII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

VIII. Adjournment.

The meeting was adjourned at 8:58 p.m.

Respectfully submitted,

_____

Shaista Shaikh

Public Finance Administrator

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Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
FEBRUARY 9, 2004, 5:30 P.M.
and AGENDA

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Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Approval of the minutes of the Ethics Commission meeting of January 12, 2004, and special meetings of October 3, 2003, and January 26, 2004. (Discussion and possible action.)

IV. Proposed budget for the Ethics Commission for FY 03-04 and FY 04-05. This item was continued from the January 12, 2004 meeting and January 26, 2004 special meeting. The Commission will consider two possible budgets: (a) a revised proposed FY 04-05 budget that meets the Mayor's instructions to reduce spending by 5.5% and an additional contingency amount of 15%; and (b) a revised proposed FY 04-05 sufficiency budget that would enable the Commission to fulfill its mandates. Draft reports on the proposed budgets will be available from the Commission office and on its web site. (Discussion and possible action.)

V. Deputy Executive Director's report
1. Budget update
2. Limited public financing program
3. Legislative developments
4. Advice and opinions
5. Investigation and enforcement program
6. Campaign finance disclosure program
7. Electronic filing program
8. Campaign finance audit program
9. Lobbyist program
10. Campaign consultant program
11. Statements of Economic Interests
12. Sunshine Ordinance Declarations
13. Education and outreach
14. Plans for governmental ethics conference in December 2004

VI. **Discussion related to search for new Executive Director of the Ethics Commission. The Commission will consider which issues are critical in the search and selection of the new Executive Director; for example, what City processes must be followed in order to fill the position? What qualities should the Commission look for in an Executive Director? Should the Commission seek input from Commission staff? What methods of recruitment should the Commission use? Should the Commission delegate some of these duties to a committee or to individual commissioners? (Discussion and possible action.)**

VII. **Nomination and election of Chairperson and Vice-Chairperson. (Discussion and possible action.)**

VIII. **Plans for implementation of Proposition E, which was passed by the voters in the November 2003 general election and became effective December 5, 2003. The Commission recently adopted regulations regarding post-employment restrictions and gifts from subordinates. The Commission must now consider whether it should adopt additional regulations, such as how to implement section 3.214, disclosure of personal, professional and business relationships; section 3.218 incompatible activities; section 3.220 prohibition on dual office holding; section 3.224 compensated advocacy; section 3.226 referrals; and section 3.230 prohibition on political activity. The Commission will discuss general policy issues in order to provide guidance to staff on the development of draft regulations. No actual regulations will be considered at this meeting. A staff report on issues related to possible additional regulations will be available from the Commission office and on its web site on Thursday, February 5, 2004. (Discussion.)**

IX. **Commissioner questions and proposed future agenda items.**

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings.

X. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

XI. **Adjournment.**

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The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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SF Ethics Commission Agenda – Monday, February 9, 2004

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Ethics Commission

February 9

(Approved 3/8/04)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

February 9, 2004

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I. Call to order and roll call.

Chairperson Robert Planthold called the meeting to order at 5:35 p.m.

COMMISSION MEMBERS PRESENT: Robert Planthold, Chairperson; Michael Garcia, Vice Chairperson; Michele Anglade, Commissioner; Joe Lynn, Commissioner. Commissioner Waukeen McCoy was excused.

STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Shaista Shaikh, Public Finance Administrator; Grace Chau, Public Finance Auditor.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Dawn Kamalanathan, Mayor's Budget Office; David Pilpel; Charles Marsteller; Marc Solomon; other unidentified members of audience.

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Ethics Commission >> Meeting Information

Ethics Commission

February 9

(Approved 3/8/04)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

February 9, 2004

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STAFF PRESENT: Ginny Vida, Executive Director; Mabel Ng, Deputy Executive Director; Shaista Shaikh, Public Finance Administrator; Grace Chau, Public Finance Auditor.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Dawn Kamalanathan, Mayor's Budget Office; David Pilpel; Charles Marsteller; Marc Solomon; other unidentified members of audience.

MATERIALS DISTRIBUTED:

Agenda for Meeting of February 9, 2004

Draft Minutes of the Regular Meeting of January 12, 2004

February 5, 2004 Memorandum from Mabel Ng regarding Minutes of October 3, 2003 Meeting with 2nd Revised Draft Minutes of the Special Meeting of October 3, 2003

Approved Minutes of the Regular Meeting of December 8, 2003

Draft Minutes of the Special Meeting of January 26, 2004

February 4, 2004 Memorandum from Mabel Ng regarding Item IV, Proposed 2004-2005 Draft Budget

January 22, 2004 Memorandum from Ginny Vida regarding Proposed Sufficiency Budget

February 4, 2004 Memorandum from Joe Lynn regarding Fines Collections Enhancements

February 4, 2004 Memorandum from Joe Lynn regarding Investing in Enforcement, A Compromise Proposal

Deputy Executive Director's Report for the Meeting of February 9, 2004

Chart regarding Revenues Received as of December 3, 2003

Copy of Article IV from Bylaws of San Francisco Ethics Commission

February 5, 2004 Memorandum from Ginny Vida re: Agenda Item VIII: Additional Possible Regulations Related to Article III, Chapter 2 of the S. F. Campaign & Governmental Conduct Code - Proposition E

San Francisco Bay Guardian article, *The Political Puppeteer*, dated February 4, 2004

"Predicted Rose Critique of Ethics Commission Projection" handout from Joe Lynn

To accommodate Dawn Kamalanathan's need to attend another hearing during the evening, Chairperson Planthold called for Item IV of the agenda, which was considered first. See Item IV.

II. Public comment on matter appearing or not appearing on the agenda that are within the jurisdictions of the Ethics Commission.

Marc Solomon commented that in the Kamala Harris case, the Ethics Commission should enforce the law rather than just allow the Committee to pay for a settlement. He also expressed his concern about the transfer of $50,000 from Mayor Newsom's Swearing-in Committee to Newsom's campaign committee to purchase equipment and

then sell it.

Charles Marsteller stated that the agreement to allow Kamala Harris to pay off a fine according to a schedule may constitute a loan.

III. Approval of the minutes of the Ethics Commission meetings of January 12, 2004, and special meetings of October 3, 2003, and January 26, 2004.

- *January 12, 2004 minutes*

Motion 04-2-9-1 (Garcia/Anglade): Moved, seconded, and unanimously passed

(4-0): that the Commission adopt the minutes of January 12 regular meeting as drafted.

- *January 26, 2004 minutes*

Because the Commissioners did not receive the January 26 minutes until tonight's meeting, Chairperson Planthold suggested deferring them until later in the evening or a subsequent meeting.

- *October 3, 2003 minutes*

Motion 04-2-9-2 (Anglade/Garcia): Moved, seconded, and unanimously passed

(4-0): that the Commission approve the 2nd revised draft minutes of October 3, 2003 special meeting.

IV. Proposed budget for the Ethics Commission for FY 03-04 and FY 04-05.

Dawn Kamalanathan, Budget Analyst, Mayor's Budget Office, stated that due to the economic outlook and the City's deficit, a projected $260 million shortfall, the FY 04-05 budget will be a moving target. She noted that two budget instructions have been

issued from the Mayor's Office: a 5.5% baseline cut and an additional 15% contingency cut. She informed the Commission that the budget plan is due February 20; the narrative section of the plan is due March 1. She further explained that the narrative part will address the Commission's mission and goals, referencing performance measures and the priority of cuts.

Commissioner Lynn stated that he believes that under Prop O, the Ethics Commission should advise the Board of Supervisors and the Mayor what the cost of the public financing would be if fully funded. Ms. Kamalanathan clarified that Prop O did not say that the Commission shall advise the Mayor's Office to expend the full amount. She explained that the Prop O budget should judiciously and thoughtfully reflect what is needed to maintain the program considering past history, current needs and the overall context of the department's budget.

Deputy Executive Director Mabel Ng stated that the staff has proposed cuts that will meet the Mayor's instructions of a 5.5% cut in spending and an additional 15% contingency cut. The cuts will hold vacant the Campaign Finance Assistant and Assistant Investigator positions, reduce temporary salaries and cut $10,000 from the DTIS work order. She said staff also prepared a sufficiency budget that would show what the Commission needs to fulfill its mandates.

Commissioner Lynn expressed his view that because of the City's fiscal situation there may be no add-backs this year by the Board. He said that the Commission's best hope may be with the Mayor's budget proposal.

Ms. Ng explained the detail of the proposed cuts and concluded that if the total requested cuts are effectuated, the Commission will have 6 staff members under the non-Prop O budget, of which the Executive Director and the Deputy Executive Director would be a 0.9 FTE each. She then discussed the three alternative proposals for the Prop O budget, which assume that there is no run-off election. She recommended adoption of Alternative #1, and pointed out that even though the budget consists of two parts (non-Prop O and Prop O), the money all come from the City's general fund and the Mayor's Budget Office is looking for cuts as a whole in general fund support.

Commissioner Lynn raised concerns that if the Commission later needs to prorate the public finance funds due to a run-off election, a supplemental appropriation may be necessary. He urged the Commission to try to avoid the supplemental process, which would require much staff time. Executive Director Ginny Vida noted that the Director of the Department of Elections had advised her that Elections does not anticipate a run-off election. Ms. Ng referred the Commissioners to CFRO Section 1.138, which does not use the term "supplemental," but provides that if the funds are insufficient, the Ethics Commission shall notify the Mayor and the Board and the City shall appropriate additional funds. The Commission must assist the Board and Mayor in estimating the additional amount required.

Commissioner Lynn advocated full funding of Prop O in the amount of $1,584,000 ($2 per resident x 792,000 residents) to avoid a supplemental request. He questioned staff's assumption that there will be more staff efficiency in Alternative 1, since the Commission will be short the Assistant Campaign Finance position. Public Finance Administrator Shaista Shaikh stated that in administering the public financing program in the first year, staff had gained experience and expertise to be able to handle the program more efficiently for the second year.

Vice Chairperson Garcia advocated Alternative #3. He explained that Alternative #3 allows the Commission to fill two positions and still have funds for 21 candidates. He suggested changes to this alternative by increasing the number of candidates to 28, each of whom would receive a maximum of $33,500, for a total of $938,000 ($33,500 x 28) for the Prop O grant. There would still be funding for two additional positions (auditor and investigator). He concluded that if these changes were made, the cost of the Prop O budget would be $1,456,491. Chairperson Planthold said that staff's recommendation was couched in terms of a response to the Mayor's instructions, but that staff had indicated that it desperately needs additional investigative staff. Thus he stated that the Commission should ask for what it needs and let others make the cuts.

Charles Marsteller suggested that the Commission use proactive and concurrent audit and enforcement to argue for the Prop O budget. He emphasized the importance of the public financing program to San Francisco as well as to the nation. Marc Solomon expressed his support for Alternative #3 but urged the Commission to ask the Mayor for full funding of Prop O.

Motion 04-2-9-3 (Garcia/Anglade): Moved, seconded, and unanimously passed (4-0): that the Commission adopt Alternative #3 for the Prop O budget, which provides for two new positions, but changes the Prop O public grant costs to $938,000, which assumes 28 candidates receiving an average of $33,500 ($33,500 x 28); and fills two positions: Auditor and Assistant Investigator. As a result, the total proposed Prop O budget will be $1,456,491.

Ms. Vida referred the Commission to her January 22 memo regarding the proposed sufficiency budget. She stated that this sufficiency budget would, if funded, enable staff to implement the Commission's mandates. She said that the proposal is a work in progress.

Commissioner Lynn made some suggestions: the cost of the investigation program could be reduced if the Commission hired staff that do not have law degrees; adding an organizational chart would strengthen the proposal; the IT officer position cost would be funded by DTIS savings; staff could redesign reporting forms to bring down the cost of the campaign consultant and lobbyist e-filing systems; and because the City is retrenching in employment, more space may be available for lower rent.

David Pilpel suggested that the functional narrative be exclusive to the sufficiency budget and an organization chart would be helpful. Marc Solomon questioned whether the budget amount of $15,000 for upgrading the server is out of line. He also questioned whether the the enforcement program is functioning properly and suggested using an outside source to conduct a review of the program. Charles Marsteller said that the Commission should prioritize positions in the sufficiency budget that the Commission really needs in the short term and long term.

Commissioner Lynn referred the Commission to his revenues projection table. He concluded the revenues projection by the staff of $56,533 is out of balance with what the Commission can realistically expect to collect. He said the Commission would sustain more cuts in spending if the actual revenues can't meet the projection. Ms. Vida stated that the Commission is close to target in terms of revenues to date. She said it is premature to assume that the Commission will not meet its revenues target.

Charlie Marsteller suggested that when the Investigator position is vacant, the Commission should consider hiring a professional outside consultant to look at the enforcement needs. He said that the Commission would be in a better position to defend its budget request in June before the Board of Supervisors by demonstrating staffing needs to meet the mandates. Vice Chairperson Garcia questioned the usefulness of such a review. He asked why the Commission couldn't get to the same place by relying on existing information. He said that the problem in the enforcement program is a direct function of under-funding.

Commissioner Lynn stated that he believes that there is $100,000 left over to spend under the non-Prop O budget because the auditor position and 0.1 FTE of the Executive Director and Deputy Executive Director positions are shifted to Prop O. He suggested that the Commission use this leftover amount to fund the Campaign Finance Assistant position. Ms. Shaikh stated that there is no $100,000 left over in the budget.

Commissioner Lynn requested staff to identify the 5.5% cuts and 15% contingency cuts. Staff referred him to the last page of February 4 memo from staff regarding the proposed FY 04-05 draft budget. Ms. Shaikh explained that the cuts were already identified and the Commission just needs to prioritize which cuts it want to assign to the base 5.5% cuts and which cuts it wants to assign to the 15% cuts.

Motion 04-2-9-4 (Garcia/Anglade): Moved, seconded, and passed (3-1, Commissioner Lynn dissenting): that the Commission accept staff's proposed non-Prop O budget with the 5.5% cut and 15% contingency, with the cuts prioritized as follows: first cut DTIS funding, then the temporary salaries, then a portion of the class 1426 position to achieve the 5.5% cut. If the 15% contingency cuts are necessary, remaining funding from the 1426 position will be cut first, then funding for the 1820 position.

Motion 04-2-9-5 (Planthold/Anglade): Moved, seconded, and unanimously passed (4-0): to authorize the Chair to review and approve the budget narrative prepared by the Executive Director.

V. Deputy Executive Director's report

Referring to the summary of electronic filing on the bottom of page 4 of the report, Commissioner Lynn noted that users of the On Line Filing System had declined from an historic level of 70% to the current 52%, indicating that more professional treasurers are entering the field.

Regarding collection of late fines, Vice Chairperson Garcia advised staff that it should make sure that the statute of limitation is considered. He also requested a flow chart to show the monthly referrals to, and collections by, BDR. Commissioner Lynn and Ms. Vida indicated that additional tracking activity may delay the collection of fines.

David Pilpel requested that the final version of the Permit Expediter legislation and the legislation prohibiting campaign consultants from lobbying be provided to the public. He also requested a schedule on the aging of accounts receivable.

At Chairperson Planthold's call, Item VII of the agenda was considered next. (See Item VII.)

Following consideration of Item VII, Chairperson Planthold excused himself for the rest of the meeting. Vice Chairperson Garcia chaired the remaining portion of the meeting.

VI. Discussion related to search for new Executive Director of the Ethics Commission.

Ms. Ng reported to the Commission that the Executive Director is selected by the Commissioners. Because it is an exempt position and not subject to Civil Service requirements, the Commission may set its own search criteria and determine what process to follow. She added that the Commission should post a notice regarding the position and ensure that the job description accurately reflects the job duties. She provided a copy of the 1997 job description for the position and an updated draft that makes training in the law a preferred, but not a minimum, requirement. She

suggested the Commission consider how it would collect resumes and determine who will review/screen the resumes.

Vice Chairperson Garcia suggested that the Commissioners consult with their various appointing officers to find out what the Commission did well and what it needs to improve. He also suggested talking to staff and others to identify qualities that are needed for the position. He recommended the participation of the public in this process.

Commissioner Anglade suggested that the Commission solicit public comments on the draft job description, which should include concrete duties regarding Prop O and Prop E. She also asked how the Commission should handle background reference information appropriately. The Commissioners asked staff to identify the search process and guidelines used by other ethics commissions.

Mark Soloman commented that the process should seek candidates outside of San Francisco and that ensuring compliance with the law should be part of the requirements. David Pilpel commented that he believed that the Executive Director needs to be tough, fair, understanding of the political process, familiar with the Commission's mandates and with San Francisco's complex political environment.

1. Nomination and election of Chairperson and Vice Chairperson.

Commissioner Anglade nominated Vice Chairperson Garcia to be the Chairperson. Vice Chairperson Garcia accepted the nomination.

Motion 04-2-9-6 (Anglade): Moved, seconded, and unanimously passed (4-0): that Commissioner Garcia be elected Chairperson for the term beginning March 1, 2004.

Vice Chairperson Garcia nominated Commissioner Anglade to be the Vice Chairperson. Commissioner Anglade accepted the nomination.

Motion 04-2-9-7 (Garcia): Moved, seconded, and unanimously passed (4-0): that Commissioner Anglade be elected Vice Chairperson for the term beginning March 1, 2004.

VIII. Plans for implementation of Proposition E, which was passed by the voters in the November 2003 general election and became effective December 5, 2003.

In response to a question regarding timetable for when the Commission must consider additional Prop E regulations, Ms. Ng informed the Commission that by August 1, 2004, all City departments are required to submit their proposed lists of incompatible activities to the Commission.

Vice Chairperson Garcia proposed that staff provide the text of the regulation they recommend, along with a timetable for when they must be considered.

IX. Commissioner questions and proposed future agenda items.

Vice Chairperson Garcia stated that he would like to democratize the process for getting items on the agenda and would like to limit special meetings to the specific reason for which they were called. He also requested that staff prepare a list of issues that are coming up in the next three to six months and that staff summarize what issues have been reviewed after each meeting to ensure that issues requiring the Commission's attention are properly addressed. He also suggested that a preliminary meeting be held to solicit public comment on regulations. David Pilpel supported the idea of holding informal meetings to solicit public comment.

Commissioner Lynn suggested that the Commission consider extending the public financing program to candidates for the Community College Board and the Board of Education.

Commissioner Lynn requested that the Commission study the exempt status of the Campaign Finance Officer position.

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

XI. Adjournment.

Motion 04-2-9-8 (Lynn/Garcia): Moved, seconded, and unanimously passed (3-0): That the Commission adjourn its meeting.

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,

Grace Chau

Public Finance Auditor

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ROBERT R. PLANTHOLD
CHAIRPERSON

MICHAEL L. GARCIA
VICE-CHAIRPERSON

MICHELE ANGLADE
COMMISSIONER

JOE LYNN
COMMISSIONER

WAUKEEN Q. MCCOY
COMMISSIONER

VIRGINIA E. VIDA
EXECUTIVE DIRECTOR

NOTICE OF

SF ETHICS COMMISSION INTERESTED PERSONS MEETING

TO DISCUSS PROPOSED REGULATIONS RELATED

TO THE IMPLEMENTATION OF PROPOSITION E

The San Francisco Ethics Commission will convene a meeting of interested persons to discuss implementation of Proposition E, which was adopted by the voters of San Francisco in November 2003 and amended the City's ethics laws. The meeting will be held on:

Tuesday, March 2, 2004
10:00 a.m. – 12:00 noon
Room 421 City Hall

Proposition E made many changes to the City's laws governing the conduct of City officers and employees. The Commission has a number of tasks to perform to implement Proposition E, including the development of regulations to clarify and interpret terms. In January, the Commission adopted regulations related to provisions governing gifts from subordinates (S.F. Campaign & Governmental Conduct Code section 3.216(c)) and post-employment restrictions (C&GCC section 3.234). These regulations are pending before the Board of Supervisors and will become effective on March 15, 2004, unless the Board vetoes them by a two-thirds vote.

At the March 2, 2004 interested persons meeting, staff will present draft regulations to clarify and implement other provisions of Proposition E, such as C&GCC sections 3.214 (disclosure of personal, professional and business relationships), 3.218 (incompatible activities), 3.220 (prohibition on dual office holding), 3.224 (compensated advocacy), 3.226 (referrals), and 3.230 (prohibition on political activity). An initial set of draft regulations will be available in advance of the interested persons meeting at the Commission office or on our website. The Commission welcomes your input on the implementation of this law.

If you would like to register for this meeting, please call the Ethics Commission at 581-2300, or email us at ethics.commission@sfgov.org. Space may be limited, so please register in advance. If you cannot attend, please convey your questions and comments about Proposition E by email at ethics.commission@sfgov.org. or by fax at 581-2317.

S:\Conflicts of Interest\Prop E implementation\interested persons notice 3.04.doc

30 Van Ness Avenue, Suite 3900 • San Francisco, CA 94102-6027• Phone (415) 581-2300 • Fax (415) 581-2317
E-Mail Address: ethics.commission@sfgov.org Web site: sfgov.org/ethics

MAR-02-2004 16:44 SF ETHICS COMMISSION

Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
MARCH 8, 2004, 5:30 P.M.
and AGENDA

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Approval of the minutes of the special meeting of January 26, 2004 and regular meeting of February 9, 2004. (Discussion and possible action.)

IV. Executive Director's report
1. Budget update
2. Limited public financing program
3. Legislative developments
4. Advice and opinions
5. Investigation and enforcement program
6. Campaign finance disclosure program
7. Electronic filing program
8. Campaign finance audit program
9. Lobbyist program
10. Campaign consultant program
11. Statements of Economic Interests
12. Sunshine Ordinance Declarations
13. Education and outreach

V. Sunshine Ordinance Task Force Referral of Order of Determination. The Sunshine Ordinance Task Force referred its order of determination regarding a complaint filed by Oliver Luby and Kevin De Liban alleging violations of the Sunshine Ordinance. Under the Sunshine Ordinance, the Ethics Commission's jurisdiction is limited to willful violations of the Sunshine Ordinance. Admin. Code § 67.34. The Sunshine Task Force found a violation of the Sunshine Ordinance but determined that it was not willful. Under the Commission's regulations, when the Commission receives a complaint, the Executive Director must determine whether there is reason to believe that a violation of State or City law within the Commission's jurisdiction has occurred and whether to refer the complaint to the District Attorney and City

Attorney. Regulations for Investigation and Enforcement Proceedings § IV(A). The Executive Director has referred this matter to the Commission for direction. (Discussion and possible action.)

VI. **Search for new Executive Director of the Ethics Commission. The current Executive Director will retire effective June 1, 2004. The Commission will evaluate and identify the qualities it is seeking in an Executive Director, consider a job notice, and a search process, including outreach, methods of recruitment and whether some recruitment and selection duties should be delegated to a committee or to individual commissioners. (Discussion and possible action.)**

VII. **Proposed regulations for implementation of Proposition E. In November 2003 the voters approved a Charter amendment that strengthened and clarified the City's conflict of interest laws. Proposition E became effective December 5, 2003. Some of the provisions of Proposition E expressly require the Commission to adopt regulations to implement them, and other provisions require regulations to clarify the terms and resolve ambiguities that have been identified. The Commission recently adopted regulations regarding post-employment restrictions and gifts from subordinates. The Commission will now consider additional proposed regulations to set up a process for the consideration of department statements of incompatible activities, which all City entities must adopt and submit to the Ethics Commission by August 1, 2004. The Commission will also consider regulations implementing section 3.214 disclosure of personal, professional and business relationships; section 3.220 prohibition on dual office holding; section 3.224 compensated advocacy; section 3.226 referrals; section 3.212 decisions involving family members, and section 3.230 prohibition on political activity. The Commission held an interested persons meeting on Tuesday, March 2, 2004, to solicit public comment on the proposed regulations. A staff report on the proposed regulations will be available from the Commission office and on its web site on Friday, February 27, 2004. Updates may be available following the interested persons meeting. Regulations adopted by the Commission become effective sixty days after adoption, unless prior to the expiration of that period two-thirds of the Board of Supervisors vetoes the regulations. (Discussion and possible action.)**

VIII. **Consideration of policy priorities for the Commission for the upcoming year. The Commission will identify the items of highest priority to the Commission for the year and compile a list of Commission policy priorities. The list of Commission policy priorities will provide guidance for future agenda setting and use of Commission resources. Priorities to be considered include but are not limited to hiring an Executive Director, evaluating the effectiveness of campaign finance laws, evaluating proposals for guaranteed funding for the Commission, and approving incompatibility statements for City entities as required by Proposition E. (Discussion and possible action.)**

IX. **Commissioner questions and proposed future agenda items.**

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion and possible action.)

X. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting. (Discussion and possible action.)

XI. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.11 to discuss pending litigation.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

XII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: pending litigation.

XIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XIV. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the SF Admin. Code) or to report a violation of the ordinance, contact Donna Hall, Sunshine Ordinance Task Force, City Hall, Room 409, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4683. Telephone: (415) 554-7724; Fax: (415) 554-7854; E-mail: Donna_Hall@ci.sf.ca.us. Copies of the Sunshine Ordinance can be obtained from the Sunshine Task Force, the San Francisco Public Library and on the City's web site at www.ci.sf.ca.us

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Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300; fax (415) 581-2317 and web site www.sfgov.org/ethics.

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Ethics Commission

March 8, 2004

(Approved 4/12/04)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

March 8, 2004

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I. Call to order and roll call.

Chairperson Michael Garcia called the meeting to order at 5:40 p.m. Chairperson Garcia announced that Executive Director Ginny Vida is on medical leave and may not return prior to her retirement. He thanked her for her service to the City and thanked former Commissioner Robert Planthold for his service on the Commission and welcomed the new commissioner, Emi Gusukuma.

COMMISSION MEMBERS PRESENT: Michael Garcia, Chairperson; Michele Anglade, Vice Chairperson; Joe Lynn, Commissioner; Waukeen McCoy, Commissioner; Emi Gusukuma, Commissioner.

STAFF PRESENT: Mabel Ng, Deputy Executive Director; Shaista Shaikh, Public Finance Administrator.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney; Paul Zarefsky, Deputy City Attorney.

OTHERS PRESENT: David Pilpel; Marc Solomon; Fred Ridel, San Francisco Common Cause; Richard Knee, Sunshine Task Force member; Garrett Jenkins, Sunshine Task Force Chair; Joseph V. A. Partansky; Gilbert Criswell; and other unidentified members

of the public.

MATERIALS DISTRIBUTED:

Agenda for Meeting of March 8, 2004

Draft Minutes of the Special Meeting of January 26, 2004

Draft Minutes of the Regular Meeting of February 9, 2004

Approved Minutes of the Regular Meeting of January 12, 2004

Deputy Executive Director's Report for the Meeting of March 8, 2004

Draft Job Notice regarding the search for an executive director

Sunshine Ordinance Task Force Order of Determination

February 27, 2004 Memorandum from Ginny Vida and Mabel Ng regarding Proposed Regulations Implementing Section 3.214 of the San Francisco Campaign & Governmental Conduct Code—Disclosure of Personal, Professional & Business Relationships

February 27, 2004 Memorandum from Ginny Vida and Mabel Ng regarding Proposed Regulations to Implement Sections 3.212, 3.220, 3.224, 3.226 & 3.230 of the San Francisco Campaign and Governmental Conduct Code

February 27, 2004 Memorandum from Ginny Vida and Mabel Ng regarding Technical Clean-Up Amendment to Regulation 3.216-1-Gifts From Subordinates

February 27, 2004 Memorandum from Ginny Vida and Mabel Ng regarding Proposed Regulations Implementing Section 3.218 of the S.F. Campaign & Governmental Conduct Code—Incompatible Activities

February 27, 2004 Memorandum from Ginny Vida and Mabel Ng regarding Additional Proposed Regulations to Implement Article III, Chapter 2 of the San Francisco Campaign & Governmental Conduct Code

March 1, 2004 Memorandum from Ginny Vida regarding Ethics Commission FY 04-05 Budget Narrative

Chapter 2 (Conflict of Interest and Other Prohibited Activities) of the S.F. Campaign & Governmental Conduct Code

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdictions of the Ethics Commission.

David Pilpel stated that the Sunshine Ordinance requires attachments to be referenced in the agenda. With respect to the draft minutes of the Commission's January 26, 2004 special meeting, Gilbert Criswell stated that minutes incorrectly state that he provided four articles. Mr. Criswell stated that he provided one article to the Commission.

Richard Knee, member of the Sunshine Task Force, noted that the Sunshine Task Force did not make a finding whether the violation by Ethics staff was willful or not willful. Mr. Knee stated that Ms. Vida acted in good faith and consulted with the City Attorney's office. He stated that his view was that Deputy Executive Director Mabel Ng had not consulted the City Attorney's office prior to ordering the deletion of the document. Mr. Knee stated that the Sunshine Task Force's lack of finding regarding willfulness prompted its members to forward the finding to the Fair Political Practices Commission ("FPPC") and the Attorney General. Marc Salomon expressed concerns about the language of agenda item V. Mr. Salomon asked that the item be rephrased.

III. Approval of the minutes of the Ethics Commission special meeting of January 26, 2004, and regular meeting of February 9, 2004.

As she was not present at the January 26 and February 9 Commission meetings, Commissioner Gusukuma requested that she be excused from voting on the minutes of those meetings.

- *January 26, 2004 minutes*

Motion 04-3-8-1 (Anglade/Lynn): Moved, seconded, and passed

(4-0, Gusukuma not voting): that the Commission excuse Commissioner Gusukuma from voting on the minutes of the January 26 special meeting.

The Commission approved the following change to the minutes of the January 26, 2004 special meeting (deletions in strikethrough and additions in italics and underline):

On page 2: Mr. Criswell provided ~~four~~ *one* newspaper article~~s~~ to the Commission.

Motion 04-3-8-2 (McCoy/Anglade): Moved, seconded, and passed

(4-0, Gusukuma excused): that the Commission adopt the minutes of the January 26 special meeting as amended.

- *February 9, 2004 minutes*

Motion 04-3-8-3 (Garcia/Anglade): Moved, seconded, and passed

(4-0, Gusukuma not voting): that the Commission excuse Commissioner Gusukuma from voting on the minutes of the February 9 regular meeting.

The Commission approved the following changes to the minutes of the February 9, 2004 regular meeting (deletions in strikethrough and additions in italics and underline):

On page 4, Commissioner Lynn requested the following changes: He concluded that the revenues projection by the staff ~~is~~ *of* $56,533 ~~over~~ *is out of balance with* what the Commission can realistically expect to collect.

On page 7, Commissioner Lynn requested that the following sentence be added to agenda item IX: *Commissioner Lynn requested that the Commission study the exempt status of the Campaign Finance Officer position.*

On page 7, Chairperson Garcia requested the following change: Vice Chairperson Garcia stated that he would like to democratize the process for getting items on the agenda and would like to limit special meetings to the specific ~~liaison~~ *reason* for which they were called.

The Commission agreed to make the following technical changes: 1) to change the header date to reflect the correct year; and 2) to renumber the motion in Item XI so that it reads Motion ~~03-12-08-12~~ *04-2-9-8*.

Motion 04-3-8-4 (Garcia/Lynn): Moved, seconded, and passed

(4-0, Gusukuma excused): that the Commission adopt the minutes of the February 9 regular meeting as amended.

IV. Deputy Executive Director's Report

Deputy Executive Director Mabel Ng referred the Commission to her written report. Ms. Ng reminded the Commissioners that their Statements of Economic Interests and Sunshine Declarations must be submitted by April 1. Ms. Ng stated that the Bipartisan California Commission issued a report on Internet Political Practices, which is posted on the FPPC's web site. Commissioner Lynn noted that the Bipartisan Commission proposed that a standard electronic filing system be adopted across the state. He stated that a standard system would allow for cost savings.

With respect to the revenues report, Commissioner Lynn stated that given a $6,000 revenues deficit per month, the revenues deficit by the end of the current fiscal year would be $56,000. He believed there were weaknesses in the budget process, which could still be corrected. Commissioner Lynn expressed concern about the campaign finance disclosure program, noting that specific written notice had not been sent to filers, which he stated could further hinder fines collection. Commissioner Lynn stated that the Fines Collection Officer position is no longer a revenue-generating position, the cause of which he believed was the Fines Collection Officer taking on some administrative office tasks. Commissioner Lynn praised Oliver Luby for the work he has performed as the Fines Collection Officer.

Commissioner Lynn offered staff the Commission's assistance with work relating to the governmental ethics conference that is scheduled to be held in San Francisco in December 2004.

Public Comment

Mr. Pilpel thanked staff for listing the names of the committees that are on payment schedules with the Commission. He inquired about the names of the non-responsive committees.

V. Sunshine Ordinance Task Force Referral of Order of Determination

Commissioner Lynn asked to be recused from the discussion of this agenda item. He stated that he may be a witness in an investigation and it would not be fair for him to judge. He said there may be a perception of bias on his part.

Public Comment

Mr. Salomon questioned why Deputy City Attorney Claire Sylvia was replaced.

Chairperson Garcia explained that because the deputy city attorneys assigned to the Commission were named in the original complaint, they would not be advising the Commission on the matter. Paul Zarefsky, Deputy City Attorney on the governmental team, was present to advise the Commission on this matter.

Motion 04-3-8-5 (McCoy/Anglade): Moved, seconded, and unanimously passed

(5-0): that the Commission recuse Commissioner Lynn from the discussion of the Sunshine Ordinance Task Force Referral of Order of Determination.

Upon the Commission's vote, Commissioner Lynn left the dais. Ms. Sylvia also left the staff's table; Ms. Ng did not.

Chairperson Garcia clarified that neither the comments nor language of the agenda item were framed by Ms. Ng, as suggested by a speaker earlier. He explained that under the Commission's regulations, when the Commission receives a complaint, the Executive Director must determine whether the Commission has jurisdiction over the complaint. Under the Sunshine Ordinance, the Commission's jurisdiction is limited to willful violations of the Sunshine Ordinance. He stated that the Executive Director had referred the matter to the Commission for direction. Commissioner Garcia noted that if the Commission were to find jurisdiction, it could refer the matter to another agency to act in place of the Commission staff. He added that the Commission's action tonight has no bearing on what the Attorney General or Fair Political Practices Commission does on this issue; nor does it have a bearing on whether the Commission should look into laws governing swearing-in committees or possible complaints related to the Newsom campaign committee.

Mr. Zarefsky explained that the Commission had jurisdiction of only willful violations of the Sunshine Ordinance. He referenced the partial transcript of the Sunshine Ordinance hearing to provide the Commission guidance as to whether the Sunshine Ordinance Task Force ("SOTF") determined that there was a willful violation. He referenced comments such as what SOTF member Doug Comstock said in regards to his motion: "...And that is why I didn't include section 67.34 - a willful failure that shall be official misconduct. Because I don't think this was a willful failure." Mr. Zarefsky also cited to comments made by member Sue Cauthen on pages 1 and 2 of the partial transcript; comments made by member Bruce Brugmann, "That's all;" and an unidentified comment "I don't think they maliciously did it." Assuming that the transcript was a fair representation of what actually occurred at the hearing, Mr. Zarefsky stated that there was plenty of basis to reasonably conclude that there was no willful violation. Mr. Zarefsky stated that if the Commission were to find a willful violation, it could claim jurisdiction. He noted that if the Commission did not find jurisdiction, the FPPC or Attorney General would not be barred from reviewing the activities of either Gavin Newsom or his swearing-in committee.

At the Commission's request, Mr. Zarefsky provided a legal analysis of the Sunshine Ordinance provisions that were cited in the order of determination. He stated that he had serious doubts that the facts, assuming the facts to be true, actually constitute violations. With respect to Administrative Code section 67.29-1—which provides that all documents prepared, received, or maintained by the mayor, city officials and department heads are the City's property and that such documents be maintained in accordance with the records retention policies—Mr. Zarefsky said it was unrelated to the operative facts. He explained that section 67.29-1 pertains to officials and department heads who are leaving City service; the intent of the section was to guard against officials and department heads taking original documents with them when they leave office.

Mr. Zarefsky noted that the SOTF reads section 69.29-7(a) to require that the Mayor and department heads keep all documents irrespective of the City's or departments' records retention policies. Mr. Zaresfsky stated that the interpretation that all documents must be retained is indirectly an implied repeal of all record retention laws, which violates basic principles of statutory construction. If in fact it were the intent that section 69.29-7(a) impliedly repeal other sections (i.e., section 8 of the Administrative Code dealing with records retention policies), then the section should have been highlighted in the Voter Information Pamphlet.

Mr. Zarefsky stated that section 67.34, the willful violation provision, makes no reference to violations of record retention laws. He advised the Commission that in making its determination of whether the allegations ought to be pursued, the Commission should make a conscientious judgment as to whether an investigation could lead to a finding of willful violation. He said he had serious doubts about the substantive question of whether there were violations, much less doubts about jurisdictional issues.

Commissioner Waukeen McCoy asked whether Mr. Zarefsky's analysis took into account the specifics of the facts and whether there are other regulations to determine whether the activities were appropriate. Mr. Zarefsky explained that he could not relate the particulars to section 69.29-1 because the section pertains to departing officials. He stated that from the standpoint of the Sunshine Ordinance, it is unlikely that the document was a public record as defined by the Public Records Act or the Commission's record retention policy. Mr. Zarefsky stated that no other provisions of the Ordinance applied. Vice-Chair Anglade stated that she understood that the regulations do not relate to the complaint matter, but asked whether the Commission is required to follow up on information that may indicate possible violations and whether there was a dereliction of duty component the Commission should consider. Mr. Zarefsky explained that the executive director has discretion over such matters. Because the executive director reports to the Commission and the Commission reviews the executive director's work, the Commission could consider the executive directors' exercise of discretion in its evaluation of the executive director. Mr. Zarefsky stated that if there appear to be gaps in the law, the law should be amended to more clearly state the duties and obligations of public officials.

In response to Commissioner Gusukuma's question about whether section 67.29-7(a) applied to employees, Mr. Zarefsky replied that the section does apply to employees

in the sense that employees report to the department heads. However, he said that it was not clear that employees could be found in violation of this section because it is not clear that the section covers employees below the department head. Commissioner Gusukuma asked whether the specific document was covered under section 69.29-7(a). Mr. Zarefsky stated that the section is part of article III of the Sunshine Ordinance, which includes the definitions section. Section 67.20(b) defines "public information" in the context of "public records" as defined in the Public Records Act. While it is correct that public records include emails, under the Public Records Act a public record is something that is prepared by, owned by, retained by or used by a public agency. He stated that section 69.29-7(a) should be read in the context of the definitions, which set forth a road map. He added that it was hard to see how the email was a public record prepared by the Ethics Commission, owned by the Ethics Commission, or retained or used by the Ethics Commission. Commissioner Gusukuma asked whether there is any sanction for non-willful violations. Mr. Zarefsky advised that the Sunshine Ordinance does not provide sanctions for non-willful violations, but that such violations could be considered in a personnel evaluation. In response to Commissioner Gusukuma's inquiry regarding whether the Commission has jurisdiction, Mr. Zarefsky stated that generally the Commission may not know whether there was a willful violation unless it reviews the matter. He stated that the Commission could exercise its discretion not to pursue the matter in light of the SOTF's comments that go in the direction against a willful violation and the advice given to the SOTF by its attorney that there was no violation.

Asked by Commissioner McCoy as to whether the email constituted ownership, Mr. Zarefsky explained that physical custody does not mean ownership. Although there is no solicitation requirement, the fact that a document is inadvertently sent to a City computer does not make the document City property. Referring to Administrative Code Section 8.3, Commissioner McCoy asked whether departments are required to create a system for the destruction of records. Mr. Zarefsky explained that section 8.3 directs departments to create standards regarding document retention.

Public Comment

Garret Jenkins, Chair of the SOTF urged the Commission to investigate the matter. Mr. Jenkins stated that the document appears to indicate violations and that information reported on statements filed afterwards is different than the information contained in the document.

Mr. Pilpel suggested that sections 67.33 and 67.34 be read in conjunction to determine the issue of willfulness. Because department heads are required to sign a declaration stating that they have reviewed the Sunshine Ordinance, he believed that a violation of the Ordinance would constitute a willful violation and therefore official misconduct.

Mr. Knee stated that the SOTF determined that the destroyed document involved the conduct of public business. He again stated that Ms. Ng did not consult the city attorney prior to ordering the destruction of the document.

Mr. Salomon stated that the Commission was being run by staff along with the city attorneys. He expressed concern about staff's destruction of the document and alleged that there was favoritism to highly paid interests. He believed that Commissioners had ex-parte discussions and that they had a biased view.

Mr. Zarefsky raised a point of privilege. He said that he did not spend three years at law school and 25 years in law practice and teaching to be accused of engaging in a cover-up. Mr. Zarefsky took umbrage with Mr. Salomon's comments.

Mr. Criswell asked the Commission to focus on real circumstances and not hypotheticals. He stated that there has been a violation of trust.

Paul Melbostad congratulated Chairperson Garcia and Commissioner Anglade on their becoming officers of the Commission. He welcomed Commissioner Gusukuma to the Commission. Mr. Melbostad said he found the argument that was presented by the city attorney to be troubling. He said the city attorney is supposed to represent the public, but felt that he was acting as an advocate before a law and motion judge.

Fred Ridel of San Francisco Common Cause also congratulated the Chair and Vice-Chair. Mr. Ridel asked the Commission to focus on procedures involving possible violations. He stated that the Commission should practice the highest ethical standards and urged the Commission to consider the issue of process and deliver proper judgment. Mr. Ridel suggested that the Commission refer the matter, without any finding, to another agency that could view the matter more objectively. He told the Commission that it would not be wise for it to dismiss the matter.

Commissioner Gusukuma stated that regardless of whether a violation is willful, the Commission could recommend an investigation. In regards to Mr. Garrett's reference to a violation of the law, Chairperson Garcia stated that even if a particular person was paid by both the campaign committee and the swearing-in committee, the fact would remain that the law was not broken. Chairperson Garcia believed that it was difficult to determine willfulness given that Ms. Vida acted upon the advice of an attorney and that Ms. Ng herself is an attorney whose reading of the law retrospectively was in line with the understanding of three other attorneys: the Commission's attorney; the SOTF's attorney; and the city attorney from the governmental team. Chairperson Garcia stated that the arguments regarding the ambiguity of sections 67.29-1 and 67.29-7(a) were compelling. While expressing her confidence in staff and its competence, Vice-Chair Anglade stated that the Commission had an obligation to investigate and re-examine the facts. She stated that she would be satisfied to know that there was no violation.

Motion 04-3-8-6 (McCoy/Anglade): Moved, seconded, and passed (3-1, Garcia dissenting, Lynn recused): that the Commission investigate the matter referred by the Sunshine Ordinance Task Force regarding the executive director and deputy executive director.

The Commission took a recess at 7:40 p.m. and re-convened at 7:57 p.m.

There was some discussion as to whether the Commission should re-open agenda item V to discuss the referral to another agency. Mr. Zarefsky urged the Commission not to re-open the item for discussion as it may violate the Sunshine Ordinance. Mr. Zarefsky noted that some members of the public may have left the meeting based on the premise that item V was closed. He explained that one reason for open meetings is so that the public has the opportunity to observe the actions of commissions.

Public Comment

Mr. Pilpel suggested that the Commission defer further action on the item until it identifies specifics such as to which agency the matter will be referred. Joseph Partansky asked that further discussion of the item be deferred.

Motion 04-3-8-7 (McCoy/Gusukuma): Moved, seconded, and unanimously passed

(4-0, Lynn recused): that at its next meeting, the Commission discuss the referral of the matter forwarded by the Sunshine Ordinance Task Force.

Commission Lynnreturned to the dais. Ms. Sylvia returned to the staff's table.

VI. Discussion related to search for new Executive Director of the Ethics Commission.

Chairperson Garcia reported that the current executive director will retire on June 1. At the Chair's request, Ms. Sylvia provided information to the Commission regarding the search for a new executive director. Ms. Sylvia explained that because the position is an exempt position, DHR will not provide assistance with the search. However, Ms. Sylvia obtained information from DHR about the required steps: (1) Job announcement: The Commission must prepare a job announcement, which requires DHR approval. Thereafter, the approved job announcement must be posted. Ms. Sylvia provided a draft announcement that incorporated suggestions that were made at the prior Commission meeting. (2) Screening: The screening process involves a review of applications to determine whether candidates meet qualifications and whether they should be interviewed. Ms. Sylvia informed the Commission that the

assessment of candidates can take place in closed session. She advised that the Commission could assign screening-related tasks to a committee or a single Commissioner. (3) Interview: Similar questions should be asked of all candidates; a rating system is recommended. The interview-related tasks can be assigned to a committee or a single Commissioner.

Commissioner Anglade asked whether there were resources available for the interview process. Ms. Sylvia noted that historically candidates have paid for their own air fare and other related costs. She said she would check to see whether there is anything available from the City. The Commission decided that the Chair and Ms. Sylvia will finalize a job announcement and receive applications, whereas staff will post the job announcement.

Commissioner Lynn recommended that the job announcement require candidates to have a track record of advocating for good government laws. There was some discussion about this matter as some commissioners noted that: the job announcement included as a qualification, "knowledge of...public ethics laws; the duties listed on the announcement included supporting the laws governing the Commission; and that the term "good government" is vague and would have to be defined.

Public Comment

Mr. Ridel stated that "good government" is defined by what the Ethics Commission is required to do. He strongly urged the promotion of good government. Mr. Ridel stated that the Commission should not be interested in candidates who lobby against its legislation. He cautioned that all screening issues be reflected in the announcement because it would be unfair to screen for qualifications or skills that are not listed in the announcement.

With respect to the recommendation to require experience advocating good government laws, Mr. Pilpel expressed concern about having a narrow pool of candidates. Mr. Pilpel stated that it was important to ensure that a number of qualified candidates apply rather than limiting the applicants to candidates with specific experience. He stated that he would be happy with a candidate who has had experience managing even a small staff and who has knowledge of the laws.

Commissioner Anglade believed that the concerns raised regarding qualifications were already addressed by the job announcement. Commissioner Lynn modified his recommendation and made a motion to include the language "Willingness to advocate for good government laws." Some commissioners expressed reservations about the modified recommendation citing that the executive director is paid to and it is the executive director's job to enforce, administer and advocate for the Ethics Commission's laws.

Motion 04-3-8-8 (Lynn/Garcia): Moved, seconded, and not passed

(2-3, Anglade, Gusukuma and McCoy dissenting): that the Commission include "willingness to advocate for good government laws" as a preferred requirement in the job announcement for the Commission's executive director position.

The Commission decided that all applications for the executive director position be submitted by May 1.

Public Comment

Mr. Ridel stated that the Commission had the option of listing "open until filled" on the job announcement and listing May 1 as an initial screening date.

Motion 04-3-8-9 (Gusukuma/Anglade): Moved, seconded, and unanimously passed

(5-0): that the Commission approve the draft job announcement with the changes noted.

There was some discussion as to where to send and post the job announcement. Some of the suggestions were as follows: COGEL, FPPC, appointing authorities, by means of a press release, the City's web site, the School of Public Policy, the Center for Governmental Studies, alumni organizations, newspapers and Secretaries of State.

Public Comment

Mr. Pilpel suggested that the job announcement be sent to previous applicants.

VII. Discussion of proposed regulations for implementation of Proposition E.

Chairperson Garcia noted that there were a number of memoranda regarding the item. He stated that the Commission was going to consider the proposed regulations on statements of incompatible activities. He asked Ms. Ng to report on the item. Ms. Ng reported that the Commission held an interested persons meeting regarding the Proposition E regulations on March 2. Ms. Ng summarized staff's report and the proposed regulations regarding section 3.218 statements of incompatible activities. Ms. Ng informed the Commission that all city entities must adopt and submit these statements to the Commission by August 1, 2004. Ms. Ng explained that section 3.218 of the Campaign and Governmental Conduct Code is a new section that implements a

provision of State law—Government Code section 1126—which prohibits local employees from engaging in activities that are "incompatible" with their City duties. Ms. Ng presented the regulations for the Commission's consideration.

With respect to proposed regulation 3.218-2, there was some discussion as to whether departments should be required to provide an information package to all employees or only to certain employees, such as those who are required to file Statements of Economic Interests. Ms. Ng explained that the statements of incompatible activities apply to all employees and officers, not only candidates who file Statements of Economic Interests. The Commission made changes to proposed regulation 3.218-2 as follows (additions in underline and italics, deletions in strikethrough):

Every department, board, commission and agency must annually provide to its officers and employees a copy of its statement of incompatible activities. Departments, boards, commissions and agencies of the City and County may satisfy this requirement by providing either a paper or electronic copy of the statement to each officer or employee and ~~either~~: (1) posting the statement on the department, board, commission or agency's web page *(if there is one)*; *and* ~~or~~ (2) posting the statement within the department, board, commission or agency's offices in the same place that other legal notices are posted. *To ensure that new employees are notified of incompatible activities, each department, board, commission and agency must provide a copy of its statement of incompatible activities to the new employee at the time of hire.*

Public Comment

Mr. Pilpel noted a typographic error with respect to the word "business" in subsection c of regulation 3.218-1. With regards to the minimum seven calendar days' notice referenced in regulation 3.218-1(d), Mr. Pilpel expressed hope that a 2-4 weeks' noticed would be provided and posted on the Ethics Commission's web site.

Motion 04-3-8-10 (McCoy/Anglade): Moved, seconded, and unanimously passed

(5-0): that the Commission adopt the proposed regulations on statements of incompatible activities, as amended.

VIII. Discussion of policy priorities.

Chairperson Garcia read some of the Commission's priorities: hiring of an executive director; implementation and administration of 2004 public financing program; Proposition E regulations; COGEL conference; evaluation of campaign finance laws; consideration of a guaranteed funding mechanism for the Commission.

There was some discussion concerning preparation for the COGEL conference in December 2004. The Commission asked staff to delineate related tasks.

IX. Commissioner questions and proposed future agenda items.

Chairperson Garcia will include on the next agenda an item regarding the Commission's referral of the Sunshine matter. Commissioner Lynn informed the Commission that with regards to the Commission's interest in obtaining independent budget authority, the deadline for submitting Charter amendments for the November ballot falls in May.

Public Comment

Mr. Pilpel asked how the Commission follows up on items that it proposes for future agenda items.

X. Summary of Commission action.

Chairperson Garcia stated that he requested this item so that the public could be made aware of the actions taken by the Commission. The Commission suggested that the summary include the following matters:

The Ethics Commission dealt with the Sunshine Ordinance Task Force order of determination, voting 3-1 (one recused), to investigate the order of determination; approved a job announcement and initiated the process for hiring an executive director; adopted regulations relating to section 3.218 statements of incompatible activities and referred them to the Board of Supervisors; and discussed policy priorities.

XI. Closed session.

There was no closed session.

XII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine

Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

There was no closed session.

XIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Mr. Pilpel asked whether the Commission was required to approve Ms. Vida's leave.

XIV. Adjournment.

Motion 04-03-08-11 (McCoy/Gusukuma): Moved, seconded, and unanimously passed

(5-0): That the Commission adjourn its meeting.

The meeting was adjourned at 10:05 p.m.

Respectfully submitted,

_____

Shaista Shaikh

Public Finance Administrator

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Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
APRIL 12, 2004, 5:30 P.M.
and AGENDA

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Approval of the minutes of the regular meeting of March 8, 2004. (Discussion and possible action.)

IV. Deputy Executive Director's report
1. Budget update
2. Limited public financing program
3. Legislative developments
4. Advice and opinions
5. Investigation and enforcement program
6. Campaign finance disclosure program
7. Electronic filing program
8. Campaign finance audit program
9. Lobbyist program
10. Campaign consultant program
11. Statements of Economic Interests
12. Sunshine Ordinance Declarations
13. Education and outreach
14. Plans for governmental ethics conference in December 2004

V. The Sunshine Ordinance Task Force sent an Order of Determination to the Ethics Commission within which it had findings of a violation of the Sunshine Ordinance against Ginny Vida, the Executive Director of the Ethics Commission, and Mabel Ng, the Deputy Executive Director. At its March meeting, the Commissioners voted to ask an outside agency to further investigate these findings. The Commission now needs to vote on to which outside agency to refer the matter. (Discussion and possible action.)

VI. Search for new Executive Director of the Ethics Commission. The current Executive Director will retire effective June 1, 2004. The Commission will evaluate and identify the qualities it is seeking in an Executive Director, consider additional outreach, the selection

process, and whether some selection duties should be delegated to a committee or to individual commissioners. Ana Borja-Valdés with the Department of Administrative Services will be joining the Commission for a discussion of these issues. (Discussion and possible action.)

VII. Consideration of whether, under S.F. Campaign and Governmental Conduct Code section 3.234(a)(1)(E), the Commission should grant a waiver to former District Attorney Hallinan from the one-year post-employment restriction imposed under section 3.234(a)(1)(D). A staff report on this item will be available from the Commission office and on its website on April 8, 2004. (Discussion and possible action.)

VIII. Reconsideration of proposed budget for the Ethics Commission for FY 04-05. The Commission's submitted budget proposal includes for Prop O purposes, funding for two additional staff and $938,000 in public grants. Since its budget submission, the Mayor's Budget Office has substituted $90,000 in temporary salaries for the two new staff positions and allocated $670,000 to the Election Campaign Fund. (Discussion and possible action.)

IX. Proposed regulations for implementation of Proposition E. The Commission will continue its consideration of regulations to implement the Charter amendment that was adopted by the voters in November 2003 to strengthen and clarify the City's conflict of interest laws. Additional regulations include those to implement section 3.214 disclosure of personal, professional and business relationships; section 3.220 prohibition on dual office holding; section 3.224 compensated advocacy; section 3.226 referrals; section 3.212 decisions involving family members, and section 3.230 prohibition on political activity. Staff reports on the proposed regulations are available from the Commission office and on its web site. (Discussion and possible action.)

X. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion and possible action.)

XI. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting. (Discussion and possible action.)

XII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XIII. Adjournment.

SF Ethics Commission Agenda – Monday, April 12, 2004

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the SF Admin. Code) or to report a violation of the ordinance, contact Donna Hall, Sunshine Ordinance Task Force, City Hall, Room 409, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4683. Telephone: (415) 554-7724; Fax: (415) 554-7854; E-mail: Donna_Hall@ci.sf.ca.us. Copies of the Sunshine Ordinance can be obtained from the Sunshine Task Force, the San Francisco Public Library and on the City's web site at www.ci.sf.ca.us

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Ethics Commission

April 12, 2004

(Approved 5/10/04)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

April 12, 2004

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I. Call to order and roll call.

Chairperson Michael Garcia called the meeting to order at 5:40 p.m. He welcomed SarahLeah Dang as the Campaign Finance/Budget Officer at the Ethics Commission.

COMMISSION MEMBERS PRESENT: Michael Garcia, Chairperson; Joe Lynn, Commissioner; Waukeen McCoy, Commissioner; Emi Gusukuma, Commissioner. Vice-Chairperson Michele Anglade arrived at 6:35 p.m.

STAFF PRESENT: Mabel Ng, Deputy Executive Director; SarahLeah Dang, Campaign Finance/Budget Officer.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney; Paul Zarefsky, Deputy City Attorney.

OTHERS PRESENT: David Pilpel; Marc Salomon; Fred Ridel, San Francisco Common Cause; Carolyn Devine, Department of Aging and Adult Services; Michael Mooney; Andy Draheim; Joni Levy, District 3 Democratic Club; Michael Goldstein, Harvey Milk LGBT Democratic Club; Ana Borja-Valdes, Department of Administrative Services; Dawn Kamalanathan and Scott McDonald, Mayor's Budget Office; Eric Allen, Gilbert Criswell, Steven O'Connor, Terence Hallinan, and other unidentified members of the

public.

MATERIALS DISTRIBUTED:

Agenda for Meeting of April 12, 2004

Draft Minutes of the Regular Meeting of March 8, 2004

Approved Minutes of the Regular Meeting of February 9, 2004

Deputy Executive Director's Report for the Meeting of April 12, 2004

Memo regarding Agenda Item VII: Request of Waiver from C&GC Code § 3.234(a)(1)(D)

Summary sheet regarding Ethics Commission: 2004-2005 Budget

Memo regarding Proposed Regulations Implementing Section 3.214 of the San Francisco Campaign & Governmental Conduct Code-Disclosure of Personal, Professional & Business Relationships

Memo regarding Proposed Regulations to Implement Sections 3.212, 3.220, 3.224, 3.226 & 3.230 of the San Francisco Campaign and Governmental Conduct Code

Memo regarding Technical Clean-Up Amendment to Regulation 3.216-1-Gifts From Subordinates

Memo regarding Information regarding budget arrangements of other ethics commissions

San Francisco Examiner article, *$1.5M request to fund campaigns*, dated April 06, 2004

Announcement regarding Ethics Commission Workshop for Candidates for the Board of Supervisors and Their Supervisors and Their Representatives, Thursday, April 29, 2004, 11:00 a.m.-12:30 p.m.

April 12, 2004 Letter from California Common Cause regarding FY04-05 Funding for Proposition O

Handout regarding the Recruitment and Selection Process Overview from the Department of Administrative Services

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Chairperson Garcia announced that the Commission will consider the agenda items in the following order: II, VII, VI, V, VIII, III, IV and IX.

There was no public comment.

III. Approval of the minutes of the regular meeting of March 8, 2004.

The Commission approved the following changes to the minutes of March 8, 2004regular meeting (changes in italic and underline text):

On page 4 section V, Commissioner Lynn requested the following changes:

Commissioner Lynn asked to be recused from the discussion of this agenda item. He stated that he may be a witness in an investigation and it would not be fair for him to judge. *He said there may be a perception of bias on his part.*

On page 4, section V, Commission Lynn requested that the following be added:

Upon the Commission's vote, Commissioner Lynn left the dais. *Ms. Sylvia also left the staff's table; Ms. Ng did not.*

On page 8, Commission Lynn requested that the following be added:

After the Commission's vote on Motion 04-3-8-7; *Commission Lynnreturned to the dais. Ms. Sylvia returned to the staff's table.*

Public Comments:

Mr. Pilpel asked whether Commission members must vote on their own recusal.

Deputy City Attorney ChadJacobs stated that one is not required to vote on matters of recusing oneself. The Campaign and Governmental Conduct Code says that one cannot vote on matters related to one's own character or conduct, and matters of recusal are generally related to one's character or conduct.

Motion 04-4-12-1 (Anglade/Lynn):Moved, seconded, and passed (5-0): that the Commission adopted the minutes of March 8 regular meeting as amended.

IV. Deputy Executive Director's report

Deputy Executive Director Mabel Ng referred the Commission to her written report. Ms. Ng reminded the Commissioners of the Sunshine Ordinance training that will occur on May 3 at 5:30 in the Herbst Auditorium. She also informed the Commission about the Public Financing workshop that staff will conduct on April 29. Finally, she welcomed SarahLeah Dang as Campaign Finance/Budget Officer and said good-bye to Shannon Hardin, who has left the Ethics Commission. She added that the Commission is in the process of looking for a new investigator.

Commission Lynn commented that the campaign revenues are on track to be about one-half what was projected. He expressed concerns that a lobbyist workshop has not occurred in the four months that he has been commissioner; and that the audit program, projected to have 16 randomly chosen audits completed this year, has not started work on the audits. Ms. Ng clarified that lobbyist workshops are offered but too few attendees signed up; thus, staff has provided one-on-one consultations. She added that staff has completed two of the audits and begun work on several others.

Public Comment:

Mr. Pilpel suggested that information in the Executive Director's report include: identity of non-responsive committees, status of audits, and a list of current lobbyist and campaign consultants with their current clients. He asked who will handle the lobbyist and campaign consultant programs now that Ms. Hardin is not with the Ethics Commission. Ms. Ng answered that she has been handling them.

V. The Sunshine Ordinance Task Force sent an Order of Determination to the Ethics Commission within which it had findings of a violation of the Sunshine Ordinance against Ginny Vida, the Executive Director of the Ethics Commission, and Mabel Ng, the Deputy Executive Director. At its March meeting, the Commissioners voted to ask an outside agency to further investigate these findings. The Commission now needs to vote on to which outside agency to refer the matter.

Commissioner Lynn and Ms. Ng left the dais. Deputy City Attorney Jacobs left the staff's table.

Because Vice-Chairperson Anglade was not present and Commissioner Lynn excused himself when this item first came up, the Commission tabled discussion of this item until later in the evening, when Vice-Chairperson Anglade would be present.

Chairperson Garcia reported that he has tried to contact several persons to refer the Sunshine complaint: Dan Purnell, Executive Director of the Oakland Public Ethics Commission; Carol Karade, Alameda City Attorney's Office (unable to reach by telephone); Chris Motley, San Mateo County Counsel's Office; Mark Morodomi, Oakland City Attorney's Office; Ann Ravel, Santa Clara County Counsel's Office (agreed to provide service but at a fee of $185/hr); and Manuela Albuquerque, Berkeley City Attorney's Office. Ms. Motley, Mr. Morodomi and Ms. Albuquerque are not available. Ms. Ravel is available to assist but would charge the Commission for her services. Chairperson Garcia stated that Mr. Purnell had assisted the Commission in the past and that Vice-Chairperson Anglade and Commissioner McCoy were pleased with his work. He recommended that the Commission refer the matter to him. He added that Mr. Purnell has a collateral position with the Oakland Public Ethics Commission as its Executive Director and that he is very well qualified.

The Commission had a long discussion about the process of the investigation by an

outside agency. Vice-Chairperson Anglade and Commissioner McCoy stated that they understood that their vote at the March meeting was a decision to refer the informal complaint to an outside agency to investigate the matter further. The agency would come back to the Commission with a recommendation either to pursue probable cause under the Regulations or dismissal of the complaint. Commissioner Gusukuma said she thought the Commission decided to refer to an outside agency for a full investigation. Chairperson Garcia, who had a dissenting vote at the March meeting, said he understood that the referral was to let the person handling the investigation decide whether there was reason to believe a violation of law had occurred and to proceed from there.

Deputy City Attorney Paul Zarefsky explained that under Section III.B of the Commission's Regulation for Investigations and Enforcement Proceedings, referrals from other governmental agencies are deemed to be informal complaints, and the Executive Director has no obligation but has the discretion to process and review informal complaints. He understood that at the March meeting, standing in the shoes of the Executive Director, the Commission decided not to let the matter die but to have an outside agency process the matter as if it were the Executive Director. The person who will now step into the shoes of the Executive Director would start at Section IV and determine if there is reason to believe a violation of law may have occurred. If the person recommends dismissal, two Commissioners can ask that the matter be calendared, and three Commissioners can decide if it should go to a preliminary inquiry under Section V. The process may involve Section VI, where the person will conduct an investigation and issue a probable cause report, or it may go further. Mr. Zarefsky added that the Commission does not get to Section V unless there is reason to believe that a violation may have occurred, and the Commission had not made a determination as to what law may have been violated. Therefore, he recommended sending this matter as a Section IV referral.

Commissioner McCoy suggested that the Commission instruct the person handling the referral to interview witnesses.

Public Comment:

Fred Ridel said that the Executive Director of the Oakland Public Ethics Commission would be an appropriate referral. The Commission could direct him to review all the materials and gather additional information and make a determination whether there has been a violation of law. He suggested that the Commission also ask Oakland to report whether the actions of Ethics staff was appropriate regardless of whether there were violations, so that the Commission can consider changes in the future if appropriate.

David Pilpel asked what public purpose is served by drawing this matter out the way the Commission has drawn it out. He saw two fundamental issues that were not addressed: Should the records retention policy be examined? Was the funding structure of the committee proper?

Motion 04-04-12-2 (McCoy/Anglade): Moved, seconded, and passed (3-1, Garcia dissenting and Lynn recusing): that the matter referred from the Sunshine Ordinance Task Force be referred to the Executive Director of the Oakland Public Ethics Commission to determine whether or not a violation of law has occurred. The Ethics Commission requests that complainants and respondents be interviewed.

VI. Search for new Executive Director of the Ethics Commission. The current

Executive Director will retire effective June 1, 2004. The Commission will evaluate and identify the qualities it is seeking in an Executive Director, consider additional outreach, the selection process, and whether some selection duties should be delegated to a committee or to individual commissioners. Ana Borja-Valdés with the Department of Administrative Services will be joining the Commission for a discussion of these issues.

Ana Borja-Valdés from the Human Resources Division of the Department of Administrative Services provided a Recruitment and Selection Process Overview handout which explains the proposed recruitment and selection plan for the Executive Director of the Ethics Commission. She said that the first phase of the plan has been completed with the issuance of the job announcement on April 1st to all City departments and several public and private entities.

The Ethics Commission will commence considering applications on May 3, 2004, and may close the announcement for filing if there is a sufficient number of candidates. Only candidates with the most relevant experience will be invited to participate in the exam and interview process. Exam and interview questions will be developed with subject matter experts; then a panel to conduct the test and initial interview process will be convened. All members of the Ethics Commission are invited to: review the questions of the exam, serve as panelists, and rate the responses from candidates. Based on the ranking from the panelists, a rank list but not the candidates' resumes will be provided to the members of the Ethics Commission for their consideration. The Commission may conduct additional interviews before making the final selection.

In a response from questions of the Commission, Ms. Borja-Valdés stated that the Commission's budget cannot provide funds to transport candidates. She said that all resumes are to be sent to the Administrative Services. She added that it is not appropriate for a member to meet with any potential candidate; the member should refer questions to her or Mr. Jacobs.

Commissioner McCoy wanted the job announcement to be sent to various organizations such as the California Association of Black Lawyers, LaRaza, and other bar associations. Commissioner Lynn also wanted the announcement sent to various secretaries of states. Deputy City Attorney Jacobs stated that the announcements can be e-mailed to these entities if the Commission provided contact information to himself or Ms. Borja-Valdés.

Public Comments:

Carolyn Devine testified that the Commission would be micromanaging if it were to look at all resumes. She suggested that Administrative Services sift through the resumes.

Eric Allen suggested that the Commission not reinvent the wheel in its search. Marc

Solomon said the Commission should look for a field for candidates. David Pilpel said the process being laid out was helpful. Gilbert Griswell said the public should become aware of who's a candidate. Mr. Ridel commented on the criteria for weighing screened candidates to develop as much consistency as possible for evaluating candidates. He asked if the Ethics Commission is able to add its own desired qualifications to the assessment process. Chairperson Garcia stated that there is a list of desired qualifications for the job, but a quantified approach has not been adopted. Ms. Borja-Valdés stated that the test assessment would be based on the preferred requirements of knowledge, skills and abilities.

VII. Consideration of whether, under S.F. Campaign and Governmental Conduct Code section 3.234(a)(1)(E), the Commission should grant a waiver to former District Attorney Hallinan from the one-year post-employment restriction imposed under section 3.234(a)(1)(D).

Deputy Executive Director Ng referred the Commission to staff's report, which recommended that the Commission limit the waiver to communications that directly relate to Mr. Hallinan's representation of criminal defendants and not extend it to communications for other purposes such as representing clients who are seeking a contract with the district attorney office. Mr. Hallinan and his counsel, Steven O'Connor, agreed with staff's recommendations and the explicit limitation mentioned in the report.

Motion 04-4-12-3 (Lynn/Gusukuma): Moved, seconded, and unanimously passed (4-0, Commission Michele Anglade was not present): that the Commission adopt staff's recommendation to grant Mr. Hallinan a waiver from San Francisco City and Government Code Section 3.234(a)(1)(D) to communicate with the District Attorney's office in his representation of criminal defendants before the District Attorney's office.

VIII. Reconsideration of proposed budget for the Ethics Commission for FY 04-05. The Commission's submitted budget proposal includes for Prop O purposes, funding for two additional staff and $938,000 in public grants. Since its budget submission, the Mayor's Budget Office has substituted $90,000 in temporary salaries for the two new staff positions and allocated $670,000 to the Election Campaign Fund.

Chairperson Garcia stated that the Mayor's office has proposed $90,000 in temporary salaries instead of the proposed audit and investigator positions the Commission requested. The shortfall is $99,095. Based on the financial budget of the city, the probability of retaining two new positions for the following fiscal years would not be likely. In regards to the $670,000 proposed for the Election Campaign Fund, the Commission had asked for $938,000, which was based on 28 candidates participating in the grant program at $33,500. The difference is $268,000. The Mayor's Budget Office is recommending that the Commission accept the $367,095 reduction. Chairperson Garcia said there might not actually be 28 candidates seeking public grants. To seek the full allotment when it might not be needed may jeopardize resources for the City or may result in the loss of jobs. He said there is a process in place to request supplemental funds if necessary. He added that as we get closer to the election, if we need more funds, we could notice it and request a supplemental.

Commission Lynn said that the supplemental request process is very cumbersome and lengthy and staff resources are limited. If we go with $670,000, that is what we will get, he added.

Public Comment:

David Pilpel testified that he supported the Mayor's reasonable approach. He added that he did not think the Commission needed to take any action on the Mayor's proposal. Carolyn Devine, a Commissioner on Aging and Adult Services, said that feeding people is a lot more important than setting aside funds for the electoral process.

Michael Mooney, who was campaign coordinator for Proposition O, disagreed with the proposal to reduce funds for candidates. He said that candidates who use public funds are not well-financed, and public financing allows a more diverse group of candidates who are not encumbered by campaign contributions. He added that a supplemental request is pie in the sky.

Andy Draheim, who worked with Common Cause to support the public financing program in 2002, said that the Commission's public financing program was a resounding success. He said the success of public financing hinges on candidates' participating, and added that the Commission should be fighting for the money.

Fred Ridel, coordinator of San Francisco Common Cause, referred the Commission to the letter from California Common Cause urging the Commission to support a full funding budget for FY04-05. He said public financing is the key to the integrity of elections. While he recognized that the City has other needs, he said there are advocates for those programs; the Commission's responsibility is to advocate 100 percent for its programs. He suggested that the Commission ask the Board to create a reserve fund so that the money will not be off the table.

Joni Levy of the District 8 Democratic Club said that Proposition O was designed to bring integrity back to elections. Michael Goldstein, President of the Harvey Milk Democratic Club, urged the Commission to support Proposition O; he said it was the job of the Mayor and Board to find money for other needs elsewhere.

Dawn Kamalanathan, Fiscal and Policy Analyst from the Mayor's Budget Office, stated that when public financing was last implemented, the Election Campaign Fund was allocated $1million, but only $315,000 was spent. It took eight months into the fiscal year before the moneys returned to the General Fund could be allocated to other programs. She said funds cannot be held on reserve and the Ethics Commission

cannot count on funds being available for a supplemental appropriation.

Ms. Ng stated that given the budget deficit, the Mayor's budget proposal is reasonable. The temporary funds allow two temporary staff to be hired for six months. In 2002, $315,000 was spent, which was than half the amount of $670,000. About 48 candidates have filed a declaration of intent to run; base on history, about 2/3 will make it to the ballot. Also, based on history, only 1/3, or 11 candidates, will qualify for funds. Given this, she said funding for 20 candidates is a reasonable number.

Commission McCoy stated that he believed the Commission's needs could be met with the Mayor's proposal, and that the budget will cover funding for candidates under Proposition O. Commission Gusukuma asked if the law requires the Commission to give its best estimate, and if the Commission's best estimate is 20 candidates at $33,500 per candidate, then it would be all right.

Commission Lynn said he would oppose the motion because he did not agree that the Commission should use the budget crisis to readjust its estimate. He added that Proposition O provides funds so that voices could be heard.

Motion 04-4-12-4 (Anglade/McCoy): Moved, seconded, and passed (4-1, Commissioner Lynn dissenting): that the Commission accept the Mayor's proposal to revise the budget.

IX. Proposed regulations for implementation of Proposition E. The Commission will continue its consideration of regulations to implement the Charter amendment that was adopted by the voters in November 2003 to strengthen and clarify the City's conflict of interest laws. Additional regulations include those to implement section 3.214 disclosure of personal, professional and business relationships; section 3.220 prohibition on dual office holding; section 3.224 compensated advocacy; section 3.226 referrals; section 3.212 decisions involving family members, and section 3.230 prohibition on political activity.

Vice-Chairperson Anglade asked for clarification regarding proposed Regulation 3.214-2. Under (a), a City officer or employee makes a governmental decision when he or she votes on a matter, yet (b) provides that the vote is not a governmental decision if the decision must be approved by another officer or employee within the same department or board. Ms. Ng clarified that if there is no other overriding decision-maker, the officer or employee who votes under (a) must disclose business, personal or professional relationship. She said, for example, if the Deputy Executive Director were to make a recommendation on a proposal, and the Ethics Commission makes the final determination and takes a vote on it, then the Deputy Executive Director would not be making the decision and would not have to disclose. If, on the other hand, the Executive Director makes a final decision, then the Executive Director must disclose the relationships. In response to Commissioner Gusukuma's question whether an employee who makes recommendations that are likely to be adopted should disclose relationships, Ms. Ng stated that it was a balancing test between requiring

everyone to write down everything or ensuring that only decision-makers must disclose relationships.

Commission Anglade questioned whether the term "business relationship" proposed Regulation 3.214-5 (b)(3) include persons who did business and have a common financial interest. Mr. Jacobs explained that when a public official has a financial interest in a decision, there are other laws that govern to determine whether the official or employee can participate in the decision. Section 3.214 was designed to determine whether your duty of loyalty to the city because of some outside relationship that you have with someone else.

Mr. Pilpel expressed concerns that under proposed Regulation 3.214-6, requiring disclosure only once may mean that the public would have a very difficult time finding out why a member was recused.

Commission Lynn asked for further clarification of Regulation 3.214-2 (b)(1). Deputy City Attorney Jacobs clarified that when the Board of Supervisors must approve a proposal submitted by the Ethics Commission, the exception in (b)(1) does not apply because the vote is a final vote taken by the Commission. Commission Lynn asked that an additional example be included in Regulation 3.214-2.

Motion 04-4-12-5 (Gusukuma/McCoy): Moved, seconded, and unanimously passed (5-0): that the proposed Regulation 3.214-6 be changed so that the last sentence reads (deletions in strike-through text): Disclosure on public record must occur before the government decision is made ~~but need occur only once~~ and need ~~not~~ be repeated when a decision is considered over multiple days or meetings.

Motion 04-4-12-6 (Gusukuma/McCoy): Moved, seconded, and unanimously passed (5-0): that the proposed regulation implementing section 3.214 be adopted as amended. Staff will develop another example relating to proposed Regulation 3.214-2(b)(1), and staff will add cautionary language regarding the examples.

Motion 04-4-12-7 (Anglade/McCoy): Moved, seconded, and unanimously passed: that the Commission adopt the technical amendment to Regulation 3.216-1 as set forth in staff's memo.

X. Commissioner questions and proposed future agenda items.

Commission Lynn thanked staff for providing the information regarding budgetary authorities of other ethics agencies. He asked that the Commission consider this at the next meeting, along with information he relayed regarding then-Supervisor Newsom's proposal to provide some autonomy to the Commission regarding its budget.

Chairperson Garcia summarized what was done tonight:

- The Commission granted a waiver from the one-year post employment

restriction under Campaign and Governmental Conduct Code section 3.234(a)(1)(D) to former District Attorney Terence Hallinan;
- Ms. Ana Borja-Valdés from the Human Resources Division of the Department of Administrative Services made a presentation on the recruitment and selection process for the new Executive Director of the Ethics Commission;
- The Commission voted 3-1, with one member recusing himself, to refer the Order of Determination from the Sunshine Ordinance Task Force regarding Executive Director Ginny Vida and Deputy Executive Director Mabel Ng to the Executive Director of the Oakland Public Ethics Commission;
- Voted to revise the estimates it had provided to the Mayor and the Board of Supervisors regarding the public financing program, substituting $90,000 in temporary salaries for two proposed new staff positions and reducing the funds in the Election Campaign Fund from $938,000 to $670,000; and
- The Commission adopted regulations to implement Campaign and Governmental Conduct Code section 3.214 related to disclosure of personal, professional and business relationships.

XII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Mr. Pilpel asked whether the Commission was required to approve Ms. Vida's leave. Chairperson Garcia stated that Ms. Vida was entitled to use personal leave and medical leave prior to her retirement.

XIII. Adjournment.

Motion 04-4-12-8 (Gusukuma/Anglade): Moved, seconded, and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 10:30 p.m.

Respectfully submitted,

_____

SarahLeah Dang

Campaign Finance/Budget Officer

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Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
MAY 10, 2004, 5:30 P.M.
and AGENDA

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Approval of the minutes of the regular meeting of April 12, 2004. (Discussion and possible action.)

IV. Deputy Executive Director's report
1. Budget update
2. Limited public financing program
3. Legislative developments
4. Advice and opinions
5. Investigation and enforcement program
6. Campaign finance disclosure program
7. Electronic filing program
8. Campaign finance audit program
9. Lobbyist program
10. Campaign consultant program
11. Statements of Economic Interests
12. Sunshine Ordinance Declarations
13. Education and outreach
14. Plans for governmental ethics conference in December 2004

V. Proposed regulations for implementation of Proposition E. The Commission will continue its consideration of regulations to implement Prop E, which was adopted by the voters in November 2003 to strengthen and clarify the City's conflict of interest laws. Additional regulations include those to implement section 3.216 (gifts), section 3.220 (prohibition on dual office holding); section 3.224 (compensated advocacy); section 3.226 (referrals); section 3.212 (decisions involving family members), section 3.230 (prohibition on political activity); and a regulation to clarify that examples provided in all Commission regulations should not be relied upon in lieu of advice. A staff report(s) on the proposed regulations will be available from the Commission office and on its web site on May 6, 2004. (Discussion and possible action.)

VI. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion and possible action.)

VII. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff
Number of possible cases: 1

VIII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.14 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation as plaintiff.

IX. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting. (Discussion and possible action.)

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XI. Adjournment.

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Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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SF Ethics Commission Agenda – Monday, May 10, 2004

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Ethics Commission

May 10, 2004

(Approved 06/14/2004)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

May 10, 2004

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I. Call to order and roll call.

Chairperson Michael Garcia called the meeting to order at 5:35 p.m. He welcomed Richard Mo as the new Investigator/Legal Analyst at the Ethics Commission.

COMMISSION MEMBERS PRESENT: Michael Garcia, Chairperson; Joe Lynn, Commissioner; Waukeen McCoy, Commissioner; Emi Gusukuma, Commissioner. Vice-Chairperson Michele Anglade arrived at 5:50 p.m.

STAFF PRESENT: Mabel Ng, Deputy Executive Director; Richard Mo, Investigator/Legal Analyst

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: David Pilpel; Brian O'Flynn, Council on Good Government; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Agenda for Meeting of May 10, 2004

Draft Minutes of the Regular Meeting of April 12, 2004

Approved Minutes of the Regular Meeting of March 8, 2004

Deputy Executive Director's Report for the Meeting of May 10, 2004

Memo regarding Agenda Item V: Proposed Regulations to Implement Sections 3.202, 3.216(b) and 3.230(b) of the San Francisco Campaign and Governmental Conduct Code

Memo regarding Agenda Item V: Proposed Regulations to Implement Sections 3.212, 3.220, 3.224, 3.226 & 3.230 of the San Francisco Campaign and Governmental Conduct Code

Materials distributed during meeting:

Superior Court of California, County of San Francisco, Appellate Division, Order, Affirming Trial Court's Dismissal re: The People of the State of California v. Hector Chinchilla

Memo regarding: Update - Recruitment and Selection Process - Executive Director, Ethics Commission

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Mr. Pilpel inquired about the status of the Executive Director search. Chairperson Garcia noted that the Commissioners were in the process of selecting a date on which to review the resumes of applicants and other than that, there was nothing new to report.

Mr. Pilpel inquired about the appropriateness of the City Attorney's Office playing a role in the screening process for the Executive Director search, and he also questioned whether the Executive Director would be selected in a closed session. Deputy City Attorney Claire Sylvia responded that the role of the City Attorney's Office is to assist the Office of Administrative Services in initially screening applicants for minimum qualifications and that the ultimate selection decision will be made by the Commission.

Mr. Pilpel inquired if there was an update on the status of the Sunshine Ordinance complaint which was forwarded to Oakland. Chairperson Garcia responded that there

was no update. Mr. Pilpel then asked if the Commission could provide a status update at the next Commission meeting. Chairperson Garcia replied that the California Office of the Attorney General had already sent a letter to the Sunshine Ordinance Task Force declining to investigate the matter because two independent branches of the City Attorney's Office had determined that there was no violation of law.

Mr. Pilpel inquired about the records retention policy and the campaign funding issue, both of which were raised at the last meeting. Chairperson Garcia noted that those issues had not been calendared yet and that it might be better to wait to hear from Oakland.

Mr. Pilpel inquired whether new Statement of Economic Interests ("SEI") filers are sent any notice of their filing obligations. Deputy Director Mabel Ng replied that new appointees and officials are required to file SEIs within 30 days of taking office. She also noted that the law requires appointing officers to inform the Commission of the identities of new appointees. Ms. Sylvia noted that new Commissioners are provided training and a copy of the form.

Mr. Pilpel inquired about the audit selection process and asked if the Commission could revisit the selection criteria. He noted that the lobbyist report and the SEI filers are not available online. Brian O'Flynn, Counsel on Good Government, commented that the City Attorney's pamphlet on its website, "Good Government Legal Guide," lacked an e-mail retention policy and expressed concern over this omission, because much public business is conducted via e-mail. He suggested that the City Attorney's Office look into developing such a policy.

III. Approval of the minutes of the regular meeting of April 12, 2004.

Motion 04-5-10-1 (Lynn/McCoy): Moved, seconded, and passed (5-0): that the Commission adopt the minutes of the regular meeting of April 12, 2004.

There was no public comment.

IV. Deputy Executive Director's report

Deputy Executive Director Ng referred the Commission to her written report. Commissioner Lynn asked if the commissioners are provided with copies of audit reports. Ms. Ng responded that this information is posted on the department's website and that staff could provide the commissioners notice when such reports are posted.

Commissioner Gusukuma asked about the small claims court action and what factors played into the process. Ms. Ng responded that the amount in controversy was a

substantial factor and that other factors included the viability of settlement.

Chairperson Garcia inquired as to when attorneys' fees could be added to a settlement agreement. He said that most private contracts have provisions for recovery of attorneys' fees and that such provisions usually apply when extraordinary efforts to collect the fees have been expended. Ms. Sylvia responded that the City Attorney's Office would research the matter, if the Commission so desired.

V. Proposed regulations for implementation of Proposition E. The Commission will continue its consideration of regulations to implement Prop E, which was adopted by the voters in November 2003 to strengthen and clarify the City's conflict of interest laws. Additional regulations include those to implement section 3.216 (gifts), section 3.220 (prohibition on dual office holding); section 3.224 (compensated advocacy); section 3.226 (referrals); section 3.212 (decisions involving family members), section 3.230 (prohibition on political activity); and a regulation to clarify that examples provided in all Commission regulations should not be relied upon in lieu of advice.

Deputy Executive Director Ng referred the Commission to staff's memoranda of February 27, 2004 and May 5, 2004, regarding the aforementioned proposed regulations to implement Prop E.

Commissioner McCoy asked for clarification regarding proposed Regulation 3.212-1, decisions involving family members, and commented that there are hundreds of commission seats, allowing for potential undue influence by a relative. Ms. Ng responded that the statute was not intended to cover non-salaried positions, such as members of City Commissions. She added that the proposed regulation was only meant to clarify and interpret the existing law and as such, it only covered employment actions and salaried employees. She also noted that if the Commission so desired, it could propose a change to the law to address Commissioner McCoy's concern.

Commissioner Gusukuma asked for clarification regarding proposed Regulation 3.224-2 (c), delegation to executive director on waivers related to compensated advocacy. She also inquired as to the possibility of inserting a "good cause" requirement into the provision, and she expressed concern over the possibility of undue influence and forum shopping without such a safeguard. Vice-Chairperson Anglade commented that although it would be beneficial to have both a good cause standard and Executive Director discretion, she was satisfied with the proposed language of the regulation.

Commissioner Lynn commented that this proposed regulation deals with the exception and that the Executive Director should have the power to determine whether necessity and good cause exist to grant or deny a waiver request.

Chairperson Garcia mentioned that no waiver can be granted without a public hearing and that this proposed regulation obviates urgent problems, as it grants discretion to the Executive Director. He also noted that as a safeguard, the Commission has the right to override the Executive Director's decision.

In response to Vice-Chairperson Anglade's question about whether this section applies to very many officers, Ms. Ng explained that various commissions and boards are covered, including the Building Inspection Commission and the Rent Board. Ms. Sylvia added that a growing number of commissions require specific qualifications. She also pointed out that subsection (c) gives the Executive Director discretion only in emergency situations; otherwise, without this subsection, people would have to wait until the next regularly-scheduled Commission hearing in order to resolve their issue.

Vice-Chairperson Anglade asked for clarification regarding proposed Regulation 3-230-1, prohibition on political activities. Specifically, she inquired about the application of subsection (b) to exempt employees, and she also opined that the definition of "political activities" under subsection (a) was very broad. She also expressed concern over scenarios whereby an employee could be compelled by his/her supervisor to attend a political function. Commissioner Lynn expressed concern about the definition of "political activities" within subsection (a). Specifically, he questioned if a member of the Board of Supervisors, by signing a ballot during office hours, might be violating this regulation. Vice-Chairperson Anglade also commented that the regulation was both overbroad and underbroad, and she questioned whether the Mayor's recent sanctioning of and participation in gay marriages would fall under this regulation.

Deputy City Attorney Sylvia responded that if a City employee is at an event in his/her capacity as a representative of the City, then this constitutes official business. Then she noted that this regulation relates to what employees are permitted to do with regards to political activities, not what they can be forced to do. Finally, in response to an inquiry from the Chairperson, Ms. Sylvia agreed that this regulation is similar in approach to the definition of political activity in campaign finance laws and that the rationale is to prevent the misuse of City resources to influence elections.

The Commission agreed to table proposed Regulation 3.230-1 and asked that staff provide examples and options, to help clarify the proposed language, for the next regularly-scheduled meeting.

Vice-Chairperson Anglade sought clarification of proposed Regulation 3.216-2(a)(3), definition of "department" under gifts from restricted sources. Specifically, she

questioned the definition of *"subject to the direction and control of the department* for which a City officer or employee directly serves." (italics added).

Public Comment:

Mr. Pilpel commented that he did not see a need to delegate any authority to the Executive Director, and he suggested that the Commission omit proposed Regulation 3.224-2(c) and revisit the issue after a year. With regards to proposed Regulation 3.216, Mr. Pilpel questioned whether an aide to a member of the Board of Supervisors falls under the scope of the regulation. He asked the same question of a member of the Youth Commission who hypothetically receives a gift from an individual, and then that individual appears before the Board of Supervisors. Mr. Pilpel concluded his comments by noting that he was in favor of adopting the amended regulation.

Motion 04-5-10-2 (Anglade/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the proposed regulation implementing section 3.212 be adopted. Ms. Ng noted that staff will correct the typographical error in the first sentence of this regulation, earlier identified by Mr. Pilpel, deleting "City officer" and replacing it with "City office."

Motion 04-5-10-3 (McCoy/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the proposed regulation implementing section 3.220 be adopted.

Motion 04-5-10-4 (Anglade/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the proposed regulation implementing section 3.224 be adopted as amended, such that the first sentence under (c)(B) reads: the requestor demonstrates good cause for the necessity for a decision before the next regularly scheduled Commission meeting.

Motion 04-5-10-5 (Anglade/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the proposed regulation implementing section 3.226 be adopted as amended, such that the first sentence under (b)(3)(B) reads: the requestor demonstrates good cause for the necessity for a decision before the next regularly scheduled Commission meeting.

Motion 04-5-10-6 (Gusukuma/Anglade): Moved, seconded, and unanimously passed (5-0): that the proposed regulation implementing section 3.202 be adopted.

Motion 04-5-10-7 (Anglade/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the proposed Regulation implementing section 3.216(a) be adopted as amended, deleting proposed subsection (c) of the Regulation.

VI. Commissioner questions and proposed future agenda items.

Commissioner Lynn noted that because there is no March 2005 election, if the Commission does not meet the timelines for developing a proposal for budgetary autonomy, the next available opportunity to do so would not be until the November 2005 election, which effectively means that the Commission would not realize any extra budget funds until 2007.

Deputy City Attorney Sylvia stated that the deadline for placing a measure on the ballot is May 18. Chairperson Garcia noted that as such, there would be no time for public input. He added that the Commission's proposal must be well thought out, particularly since there is no model for it.

Commissioner Lynn then expressed concern that campaign finance revenue projections were not going to be met, and that Harvey Rose's office may use these lowered figures to set the department's future budget. He questioned what types of budget cuts Mr. Rose's office might propose. He suggested that for the month of June, the department put into place abbreviated enforcement procedures for non-filers and willful violators of the law.

Ms. Ng explained that staff is in the process of developing an expedited process for non-filers. She added that although she did not know what Mr. Rose would do and that she had never appeared before him, she would tell his office that staff was making their best efforts.

Commissioner McCoy suggested that section 3.212 of the Campaign and Governmental Conduct Code be extended to cover non-salaried positions.

Chairperson Garcia noted that the Commission will convene a special meeting for the purposes of conducting the Executive Director search. Deputy City Attorney Sylvia said that she would consult with Ana Borja-Valdez of Administrative Services, and then she would coordinate a meeting time with the Commissioners.

Commissioner Lynn asked who was serving as the subject matter experts (SME's) for the Executive Director search. Commissioner McCoy inquired if it the Commissioners could obtain copies of the candidates' resumes prior to the special meeting.

Ms. Sylvia responded that there were three SME's: 1) Kate Favetti, Executive Director of the Civil Service Commission; 2) Mark Krausse, Executive Director of the California

Fair Political Practices Commission; and 3) Gloria Young, Clerk of the Board of Supervisors. She also noted that she would confer with Ms. Valdez, regarding distribution of resumes.

Public Comment:

Mr. Pilpel commented that the Commission was probably in the clear, as it had already met with the Mayor's Office regarding its FY 2004-2005 budget.

The Commission went into recess at 7:35pm.

VII. Closed session held pursuant to Charter Section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

At 7:50pm, the Commission reconvened its meeting.

Motion 04-5-10-8 (Anglade/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the Commission go into closed session.

At 7:53pm, the Commission went into a closed session.

At 9:17pm, the Commission reconvened its regularly-scheduled meeting.

VIII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.14 on whether to disclose action taken or discussions held in closed session.

Motion 04-5-10-9 (Anglade/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the Commission not disclose any action taken or discussions held in closed session.

Public Comment:

Mr. Pilpel asked if the Commission took any action during its closed session which required disclosure, and Chairperson Garcia responded in the negative.

IX. Summary of Commission Action.

Chairperson Garcia summarized what was done tonight:

- The Commission adopted several regulations to implement provisions related to the City's conflict of interest laws.
- At its next meeting, the Commission anticipates that it will consider a regulation interpreting Section 3.230 related to political activity, the Executive Director search, and an expedited enforcement procedure related to the failure to file campaign reports.

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Mr. Pilpel noted that for future minutes, it would be helpful to distinguish between materials handed out in advance of the meeting and materials handed out during the meeting. He also asked about the materials distributed related to a case involving former Commissioner Chinchilla.

Ms. Sylvia responded that the Commission had filed an amicus brief in the appeal and the court of appeals had issued an opinion affirming the lower court.

XI. Adjournment.

Motion 05-5-10-10 (Anglade/Lynn): Moved, seconded, and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 9:20 p.m.

Respectfully submitted,

_____

Richard Mo

Investigator/Legal Analyst

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05-2004 16:59 SF ETHICS COMMISSION 415 581 2317 P.02/05

Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
JUNE 2, 2004, 5:30 P.M.
and AGENDA

Room 82 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

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I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Closed session. (Discussion and possible action.)

A. Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

B. Closed session held pursuant to the Ralph Brown Act, Government Code section 54957(b) and the Sunshine Ordinance section 67.10(b): Public Employee Appointment/Hiring: Executive Director, Ethics Commission.

IV. Discussion and votes regarding closed session action and deliberations. (Discussion and possible action.)

A. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.

B. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 whether to disclose any action taken or discussions held in closed session regarding public employee appointment/hiring.

Motion: The Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: public employee appointment/hiring: Executive Director, Ethics Commission.

V. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

VI. Adjournment.

Know Your Rights Under the Sunshine Ordinance

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Ethics Commission

June 2, 2004

(Approved 06/14/2004)

Minutes of the Special Meeting of the

San FranciscoEthics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 82

June 2, 2004

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I. Call to order and roll call.

Chairperson Michael Garcia called the meeting to order at 5:50 p.m.

COMMISSION MEMBERS PRESENT: Michael Garcia, Chairperson; Michele Anglade, Vice-Chairperson; Joe Lynn, Commissioner; Waukeen McCoy, Commissioner; Emi Gusukuma, Commissioner.

STAFF PRESENT: Mabel Ng, Deputy Executive Director; Richard Mo, Investigator/Legal Analyst

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

MATERIALS DISTRIBUTED:

San Francisco Ethics Commission Regulations for Investigations and Enforcement Proceedings

San Francisco Ethics Commission Investigations and Enforcement Proceeding

Procedures for Probable Cause Hearing and Hearing on the Merits Summary of Regulations (summary)

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

III.A. Closed session held pursuant to Charter Section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Motion 04-6-2-1 (Anglade/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the Commission go into closed session.

At 6:00 p.m., the Commission went into a closed session.

At 6:20 p.m., Deputy Executive Director Mabel Ng and Investigator/Legal Analyst Richard Mo left the room.

At 7:15 p.m., Ms. Ng and Mr.Moreturned to the room.

IV.A. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.14 on whether to disclose action taken or discussions held in closed session.

Motion 04-6-2-2 (Anglade/Lynn): Moved, seconded, and unanimously passed (5-0): that the Commission not disclose any action taken or discussions held in closed session.

Motion 04-6-2-3 (McCoy/Anglade): Moved, seconded, and unanimously passed (5-0): that the Commission adjourn the first part of the closed session.

Ms. Ng and Mr. Mo departed.

III.B. Closed session held pursuant to the Ralph Brown Act, Government Code section 54957(b) and the Sunshine Ordinance section 67.10(b): Public Employee Appointment/Hiring: Executive Director, Ethics Commission.

Motion 04-6-2-4 (Anglade/Lynn): Moved, seconded, and unanimously passed (5-0): that the Commission go into closed session.

At 7:25 p.m., the Commission went in a closed session. Ms. Ana Borja-Valdes of the Office of Administrative Services was present.

IV.B. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 whether to disclose any action taken or discussions held in closed session regarding public employee appointment/hiring.

Motion 04-6-2-5 (Anglade/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the Commission not disclose any action taken or discussions held in closed session.

V. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

VI. Adjournment.

Motion 04-6-2-6 (Anglade/Lynn):Moved, seconded, and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 10:20 p.m.

Respectfully submitted,

_____

Richard Mo

Investigator/Legal Analyst

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Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
JUNE 14, 2004, 5:30 P.M.
and AGENDA

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Approval of the minutes of the regular meeting of May 10, 2004, and special meeting of June 2, 2004. (Discussion and possible action.)

IV. Deputy Executive Director's report
1. Budget update
2. Limited public financing program
3. Legislative developments
4. Advice and opinions
5. Investigation and enforcement program
6. Campaign finance disclosure program
7. Electronic filing program
8. Campaign finance audit program
9. Lobbyist program
10. Campaign consultant program
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12. Sunshine Ordinance Declarations
13. Education and outreach
14. Plans for governmental ethics conference in December 2004

V. Proposed combination of the Ethics Commission's whistleblower hotline with the Controller's whistleblower hotline. Charter section C3.699-11 requires the Ethics Commission to maintain a whistleblower hotline. Proposition C, adopted by the voters in November 2003, amended the Charter to require the Controller to administer a whistleblower and citizen complaint hotline. Proposition C also amended the Charter to permit the City to consolidate these whistleblower functions into a single City call center, switchboard, or information number, provided that the supervision of the whistleblower function remains with the Controller and its responsibilities and function continue unabridged. The Commission will consider whether to consolidate its whistleblower

hotline with the Controller's hotline. A representative from the Controller's Office will make a presentation to the Commission. (Discussion and possible action.)

VI. Proposed regulation to implement Proposition E. The Commission will continue its consideration of a proposed regulation to implement Proposition E, which was adopted by the voters in November 2003 to strengthen and clarify the City's conflict of interest laws. The proposed regulation will provide definitions to implement section 3.230 (prohibition on political activity). A staff report on the proposed regulation will be available from the Commission office and on its web site on June 9, 2004. (Discussion and possible action.)

VII. Review of the advice letter function. Staff will discuss the process by which advice letters are issued. A staff report which uses a draft letter as an example will be available from the Commission and on its website on June 9, 2004. (Discussion.)

VIII. Consideration of expedited enforcement procedure regarding non-filers. The Commission will consider a streamlined enforcement procedure that will help to ensure that all committees file campaign reports as required by law. The Commission will also consider proposed regulations to implement the new procedure. A staff report and proposed regulations will be available from the Commission office and on its web site on June 9, 2004. (Discussion and possible action.)

IX. Consideration of whether the Commission should take action regarding the budget cuts proposed for the Fair Political Practices Commission, and if so, what action should be taken. The Governor has proposed to cut funding for the FPPC, which will likely result in reductions in advice provided to the public and elimination of the toll-free advice number. The Commission will consider what action, if any, it should take in an effort to advocate against reductions in these services that have been helpful to staff and members of the public. (Discussion and possible action.)

X. Consideration of a draft statement of incompatible activities for the members and staff of the Ethics Commission. Under Proposition E, adopted by the voters in November 2003, all City departments, commissions and boards must submit to the Ethics Commission statements listing those outside activities that are inconsistent, incompatible or in conflict with the duties of the officer and employees of that department, commission or board. Staff has drafted a proposed statement of incompatible activities for the Commission's consideration. A staff report and draft statement of incompatible activities will be available from the Commission office and on its web site on June 9, 2004. (Discussion and possible action.)

XI. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion and possible action.)

XII. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting. (Discussion and possible action.)

XIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XIV. Adjournment.

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Ethics Commission

June 14, 2004

(Approved 7/12/04)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

June 14, 2004

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I. Call to order and roll call.

Chairperson Michael Garcia called the meeting to order at 5:37 p.m.

COMMISSION MEMBERS PRESENT: Michael Garcia, Chairperson; Michele Anglade, Vice-Chairperson; Emi Gusukuma, Commissioner; Joe Lynn, Commissioner; Commissioner Waukeen McCoy arrived at 5:40 p.m.

STAFF PRESENT: Mabel Ng, Deputy Executive Director; Grace Chau, Auditor

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Jodi Darby, Project Manager City Projects San Francisco Controller's Office; Charlie Marsteller; Anita Mayo, Pillsbury Winthrop; Eric Allen; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Agenda for Meeting of June 14, 2004

Draft Minutes of the Regular Meeting of May 10, 2004

Draft Minutes of the Special Meeting of June 2, 2004

Approved Minutes of the Regular Meeting of April 12, 2004

Deputy Executive Director's Report for the Meeting of June 14, 2004

Provision related to Whistleblower Hotline and Whistleblower Ordinance

Memo date June 7, 2004 regarding Agenda Item VI: Proposed Regulations to Implement Section 3.230 of the San Francisco Campaign and Governmental Conduct Code

Memo dated June 7, 2004 regarding Agenda Item VII: Advice Letters

Memo dated June 9, 2004 regarding Item VIII: Proposed Streamlined Enforcement Program for Committees that Continue to Fail to File Campaign Finance Reports After Receiving Specific Written Notice

Draft Letter dated June 15, 2004 regarding Reduction to the Budget of the Fair Political Practices Commission

Memo dated June 9, 2004 regarding Item X: Statement of Incompatible Activity for Ethics Commission

Materials distributed during meeting:

None

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

Chairperson Michael Garcia called Item V before Item III and IV.

III. Approval of the minutes of the regular meeting of May 10, 2004, and special meeting of June 2, 2004.

Minutes of the regular meeting of May 10, 2004

Deputy Executive Director Mabel Ng noted four changes:

- In the first sentence of paragraph three on page 4, delete "by the compensated advocacy provision."

- In the fourth line from the last in paragraph four on page 4, change "during offices hours" to "during office hours."

- In the third line of paragraph two on page 4, add "*department*" after "*subject to the direction and control of the*."

- In the second line of the paragraph before the Public Comments: "Mark Krauss" should be "Mark Krausse."

Motion 04-6-14-2 (Anglade/McCoy): Moved, seconded, and passed (5-0): that the Commission adopt the minutes of the regular meeting of April 12, 2004with the suggested changes.

Minutes of the regular meeting of May 10, 2004

Vice-Chairperson Anglade pointed out that under Item III. B., the minutes should note that Anna Borja-Valdes from the Human Resource Division the Department of Administrative Services was present.

Motion 04-6-14-3 (Lynn/Gusukuma): Moved, seconded, and passed (5-0): that the Commission adopt the minutes of the special meeting of June 2, 2004with the change suggested.

IV. Deputy Executive Director's report

Deputy Executive Director Ng announced that staff will conduct a hand-on workshop for candidates for the Board of Supervisors on June 15.

Ms. Ng referred the Commission to Item 8 of the Deputy Executive Director's Report. She noted that the list of audit status was added based on a suggestion by David Pilpel. She also noted that on June 23 and June 30, the Budget Committee will conduct hearings on the Ethics Commission's budget. Ms. Ng expressed hope that the Commissioners show their support by attending the hearing.

In response to Chairperson Garcia's inquiry of budget status, Ms. Ng reported that $15,000 for the new server will be covered in this year's budget, therefore, the Commission may lose this amount in the next year's budget. She also expressed concerns of losing more than the Campaign Finance Assistant and the part time Investigator positions.

Commissioner Lynn asked staff to provide additional information concerning Item 8. He suggested that the list include the year the audit was chosen and disclose the amount of activity of each committee. He inquired as to how staff decided which audit to start first. He also questioned whether the audits that have not started will be put in limbo for a while.

Public Comments

Charlie Marsteller asked staff to provide him a copy of the reply of the general questions to the Chair of the Budget Committee. He also requested to be provided a copy of the proposed budget cut as soon as it is submitted by the Budget Analyst. Mr. Marsteller suggested that the Commission prioritize its needs as a body to prepare for the possible add-backs.

V. Proposed combination of the Ethics Commission's whistleblower hotline with the Controller's whistleblower hotline. Charter section C3.699-11 requires the Ethics Commission to maintain a whistleblower hotline. Proposition C, adopted by the voters in November 2003, amended the Charter to require the Controller to administer a whistleblower and citizen complaint hotline. Proposition C also amended the Charter to permit the City to consolidate these whistleblower functions into a single City call center, switchboard, or information number, provided that the supervision of the whistleblower function remains with the Controller and its responsibilities and function continue unabridged. The Commission will consider whether to consolidate its whistleblower hotline with the Controller's hotline. A representative from the Controller's Office will make a presentation to the Commission.

Jodi Darby, Project Manager for City Projects from the Controller's Office stated that Proposition C from the November 2003 election requires the Controller to implement a whistleblower hotline. Understanding that the Ethics Commission has many underfunded mandates, she asked the Commission to approve a roll over of the Ethics Commission's whistleblower hotline to the Controller's hotline. She stated that through a brief interview, the call taker/investigator at the Controller's Office will determine the area of concern of the tracked call or email. If the caller's area of concern is within the Ethics Commission's jurisdiction, the call will be forwarded to the Ethics Commission. The Controller's Office in coordination with the Ethics Commission will set up a specific procedure in regards to how to direct the call.

Commissioner Lynn expressed concern about having procedures in place that will allow whistleblowers to go to other agencies in case of a conflict of interest such as someone from the Controller's Office making a complaint about the Controller.

Public Comments

Charlie Marsteller recommended that the Commission proceed with merging the hotlines provided that specific written procedures are set up later.

Motion 04-6-14-1 (Anglade/Gusukuma): Moved, seconded, and unanimously passed (5-0): to approve the consolidation of the whistleblower hotlines provided that the Controller's Office issues regular reports.

VI. Proposed regulation to implement Proposition E. The Commission will continue its consideration of a proposed regulation to implement Proposition E, which was adopted by the voters in November 2003 to strengthen and clarify the City's conflict of interest laws. The proposed regulation will provide definitions to implement section 3.230 (prohibition on political activity).

Deputy Executive Director Ng referred the Commission to her memo dated June 7, 2004 regarding proposed regulation to implement Section 3.230 of the San Francisco Campaign and Governmental Conduct Code. She noted that this is the last of the initial regulations proposed by staff. The proposed regulation defines the phrases "in uniform," political activities, and "working hours."

Commissioner Lynn questioned whether "wearing any part of the uniform" is an appropriate ban because wearing only part of the uniform may not lead the public to identify the person as a City official. He suggested amending the language to "wearing all parts of the uniform as required as to lead a reasonable member of the public to identify this person as a uniformed officer of the City." The proposal was not seconded. Ms. Ng explained that the general rule is to ensure that the public is not misled into thinking a uniformed officer or employee is engaging in political activities. Deputy City Attorney Chad Jacobs noted that the regulation sets up a bright line rule.

Commissioner Lynn questioned whether the political activity defined in the regulation would prohibit the Board of Supervisors from submitting an argument to support a ballot measure. Deputy City Attorney Chad Jacobs noted that there is a specific law in the City's Election Code that permits the Board of Supervisor to do so.

Motion 04-6-14-4 (McCoy/Anglade): Moved, seconded, and unanimously passed (5-0): to adopt the proposed regulation.

VII. Review of the advice letter function. Staff will discuss the process by which advice letters are issued.

Deputy Executive Director Ng summarized the process of issuing advice letters and recommended no changes in the current process.

Commissioner Lynn commented that in the sample advice letter, the City does not have the power to retroactively change the term of the contract without additional consideration passing to the employee. He stated that the Commissioners, not staff, should interpret the law and pointed out that there is no public input or input from the Commissioners in the advice letter process. He suggested that the Commission find out how other Commissions such as FPPC and Los Angeles Ethics Commission handle this. He recommended that Commissioners review advice letters before they are issued. Commissioners agreed that the Commissioners as a whole should review an advice letter after both the City Attorney and District Attorney have reviewed it and before it is sent out to the requester and posted to the website. Chairperson Garcia asked that staff prepare recommendations for the Commission to consider.

Charlie Marsteller suggested that concurrent rather than consecutive review by the City Attorney and District Attorney is preferred for a timely action.

Commissioner McCoy questioned the oral advice process. He and Commissioner Lynn suggested that staff direct the person who seeks oral advice to the original law and let the person draw his own conclusion. Anita Mayo, from Pillsbury Winthrop, testified that she has requested both oral and written advice and it is very helpful for the regulated community to receive both types of advice. She stated that staff suggests for her to seek written advice when the issue is very difficult to resolve, but if the issue is not difficult, staff has provided informal oral advice and always emphasized that the advice given was the most conservative advice. She noted that written advice takes much longer than oral advice and sometimes requestors cannot wait, so the oral advice function is important. She stated that the Commission has been following the FPPC's practice by providing both types of advice.

VIII. Consideration of expedited enforcement procedure regarding non-filers. The Commission will consider a streamlined enforcement procedure that will help to ensure that all committees file campaign reports as required by law. The Commission will also consider proposed regulations to implement the new procedure.

Deputy Executive Director Ng referred the Commission to a staff memorandum dated June 9, 2004 regarding the proposed streamlined enforcement program for committees that continue to fail to file campaign finance reports after receiving Specific Written Notice. She noted that the proposed regulation shortens the timeline, skips the formal investigation stage and requires a public hearing conducted by the Commission as a whole rather than by a designated commissioner.

Commissioner Lynn said that the proposed streamline procedure requires staff to go through two more steps by sending an additional letter (the initial letter in Step 1 of the proposed timeline table) and post names to website, which will add burdens to staff. He questioned whether the additional letter may qualify as a specific written notice under state law. He suggested that the Commission hold an interested person meeting for public input so that a consensus can be reached on this streamlined approach. He stated that posting the non-filers' names on the web is a great idea but should not be part of the expedited enforcement procedure.

Commissioner Gusukuma asked what steps the current process does not have and whether the Commissioners will be available to issue determinations within 10 days of a hearing. Ms. Ng stated that these matters have not been referred to the enforcement staff is because the Commission has not had sufficient enforcement resources. She added that the commission can have a closed session and make its determination right after the hearing.

Public Comments

Charlie Marsteller asked whether the Commission has enough staff resources to implement this procedure with the cut of part-time investigator. He commented that he was impressed that staff has sent notices and made follow-up phone calls in a proactive and timely manner. He recommended adding on the draft letter in Attachment B the specific state or local law provision that requires the Specific Written Notice so that non-filers who receive letter will take it more seriously. He suggested that the Commission find out how other jurisdictions such as Los Angels Ethics Commission handle this because it is important to understand the timeline for the second pre-election statement.

Motion 04-6-14-5 (Anglade/McCoy): Moved, seconded, and unanimously passed (5-0): to accept staff recommendations regarding a streamlined enforcement procedure and revisit this issue in 6 months when staff will also make a presentation on other jurisdictions' practices.

The Commission went into recess at 7:30 pm.

IX. Consideration of whether the Commission should take action regarding the budget cuts proposed for the Fair Political Practices Commission, and if so, what action should be taken. The Governor has proposed to cut funding for the FPPC, which will likely result in reductions in advice provided to the public and elimination of the toll-free advice number. The Commission will consider what action, if any, it should take in an effort to advocate against reductions in these services that have been helpful to staff and members of the public.

The Commission resumed the meeting at 7:35 pm.

Deputy Executive Director Ng referred the Commission to a draft letter dated June 15, 2004 to the Mayor and the Board of Supervisors regarding the proposed reduction to the budget of the FPPC. Ms. Ng recommended that the Commission approve the letter. The letter will be sent to the Mayor, the Board of Supervisors and the City's State Legislation Committee.

Commissioner Lynn stated that the FPPC's hotline is a capital asset and it is really a loss to the community if these people who have been trained over the decades are gone.

Ms. Ng noted that according to a phone conversation with the Executive Director of the FPPC, the advice line will not be affected if the budget reduction is not greater than $500,000.

Public Comments

Charlie Marsteller echoed Commissioner Lynn's comments regarding the competency of the FPPC hotline staff. He stated that foreseeing the City's budget cuts, the FPPC's advice line is the only backup.

Motion 04-6-14-6 (McCoy/Lynn): Moved, seconded, and unanimously passed (5-0): to adopt the letter drafted by staff regarding the reduction of the budget of the FPPC and to copy the State Legislation Committee.

X. Consideration of a draft statement of incompatible activities for the members and staff of the Ethics Commission. Under Proposition E, adopted by the voters in November 2003, all City departments, commissions and boards must submit to the Ethics Commission statements listing those outside activities that are inconsistent, incompatible or in conflict with the duties of the officer and employees of that department, commission or board. Staff has drafted a proposed statement of incompatible activities for the Commission's consideration.

Deputy Executive Director Ng referred the Commission to staff's memoranda of June 9, 2004, regarding the statement of incompatible activity for The Ethics Commission. She briefly went through the proposed statement and noted that under section 1 of page 1 of the statement, the phrase "who are lawyers" in the second bullet should be deleted.

The Commissioners discussed de minimis uses of computers and decided to change "email" to "computer" so that de minimis uses of computer is allowable.

Ms. Ng suggested that another bullet which reads: in advance of employee engaging in an outside employment, the employee should notify the Executive Director" be added to section V (Time Demands). Some Commissioners expressed concerns that the language may implicate privacy rights of employee. Deputy City Attorney Jacobs explained that the language strengthens the statement of incompatible activities and has been relied upon by the courts in determining what activities are inappropriate. Commissioners decided not to add the language and may consider putting it under sections that are appropriate.

Ms. Mayo pointed out that "political parties" should be added after "ballot measure committee" at the first bullet point under roman numeral I so that it reads: "Members and employees of the Ethics Commission may not attend campaign fundraisers or other campaign -related events sponsored by a City officer, candidate for City office, ballot measure committee, political parties, or any other person or entities."

Motion 04-6-14-5 (Garcia/Gusukuma): Moved, seconded, and unanimously passed (5-0): approve a draft version of the Ethics Commission's Statement of Incompatible Activities with the following changes: delete "who are lawyers" from the first bullet point under section I; add "political parties," after "ballot measure committee" in the first bullet point under section I; replace "email" with "computer" under the first bullet point in section II; correct the spelling of de minimis.

XI. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

None.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

Commissioner Lynn stated that because next year is an odd year, the Commission may

want to look into amending the Campaign Finance Reform Ordinance to provide for amending administrative fines for late filings.

XII. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting.

Chairperson Garcia summarized what was done tonight:

- Approved a roll-over of the current Ethics Whistleblower Hotline to the coming 554-CITY Controller's Whistleblower Complaints Hotline;
- Adopted a regulation to implement section 3.230 of the Campaign and Governmental Conduct Code, related to prohibition on political activities;
- Discussed the Commission's current advice procedure;
- Adopted regulations to implement a streamlined enforcement program for committees that continue to fail to file campaign finance reports after receiving specific written notice.
- Approved a letter to the Mayor and the Board of Supervisors, with a copy to members of the State Legislation Committee, to urge the City to oppose further reductions in the budget of the Fair Political Practices Commission; and
- Adopted a draft version of the Statement of Incompatible Activities for the members and staff of the Ethics Commission.

XIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Eric Allen, a member of the public, requested the Commission post the adopted Statement of Incompatible Activity on the Commission's web.

XIV. Adjournment.

Motion 04-6-14-8 (Anglade/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 8:40 p.m.

Respectfully submitted,

Grace Chau

Auditor

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Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
JUNE 28, 2004, 2:00 P.M.
and AGENDA

Room 82 City Hall
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I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Closed session held pursuant to the Ralph Brown Act, Government Code section 54957(b) and the Sunshine Ordinance section 67.10(b): Public Employee Appointment/Hiring: Executive Director, Ethics Commission. (Discussion and possible action.)**

IV. **Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 whether to disclose any action taken or discussions held in closed session regarding public employee appointment/hiring. (Discussion and possible action.)**

Motion: The Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: public employee appointment/hiring: Executive Director, Ethics Commission.

V. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

VI. **Adjournment.**

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Ethics Commission

June 28, 2004

Approved July 12, 2004

Minutes of the Special Meeting of the

San FranciscoEthics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 82

June 28, 2004

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I. Call to order and roll call.

Chairperson Michael Garcia called the meeting to order at 2:25 p.m.

COMMISSION MEMBERS PRESENT: Michael Garcia, Chairperson; Joe Lynn, Commissioner; Emi Gusukuma, Commissioner. Waukeen McCoy, Commissioner, arrived at 5:00 p.m. on June 28, 2004. Michelle Anglade, Vice-Chairperson, was not present during the portion of the meeting occurring on June 28, 2004, but joined the Commission at 5:30 p.m. on June 30, 2004.

DEPARTMENT OF ADMINISTRATIVE SERVICES: Ana Borja-Valdes, Department of Administrative Services

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney; Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Charles Marsteller; Paul Melbostad; Robert Dockendorf

MATERIALS DISTRIBUTED: Agenda for meeting of June 28, 2004

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Mr. Marsteller provided comments regarding the Commission's search for a new executive director. Mr. Marsteller explained that the new executive director needs to establish and maintain appropriate boundaries between staff and the regulated community and have grounding in the laws under the Commission's jurisdiction. He stated that the Los Angeles Ethics Commission is a good illustration of the benefits provided by strong leadership. Finally, Mr. Marsteller stated that now is the time for the Ethics Commission to strengthen its boundaries and standards of conduct so that the Commission will have the respect of the people of the City.

Mr. Melbostad provided comments regarding the Commission's search for a new executive director. Mr. Melbostad explained the process that the Commission used the last time it hired an executive director. He stated that what has changed between now and then is that for the indefinite future the Commission is going to remain underfunded. Accordingly, Mr. Melbostad recommended that the Commission hire an executive director with the creativity and judgment to prioritize the work of the Commission without compromising fairness. Mr. Melbostad stated that the Commission needs to choose those tasks that will have the most impact.

Mr. Dockendorf provided comments about the Commission's search for a new executive director. He stated that although the Commission has accomplished a lot in the past, there is still a lot that needs to be done in the future. Mr. Dockendorf suggested that the Commission should look to private industry as an example, which generally for a CEO or chief financial officer will go outside of their local jurisdiction or even outside of their industry in order to bring in new ideas or a new perspective.

III. Closed session held pursuant to the Ralph Brown Act, Government Code section 54957(b) and the Sunshine Ordinance section 67.10(b): Public Employee Appointment/Hiring: Executive Director, Ethics Commission.

Motion 04-6-28-1 (Gusukuma/Lynn): Moved, seconded, and unanimously passed (3-0) that the Commission go into closed session.

At 2:45 p.m., the Commission went into closed session. Ms. Ana Borja-Valdes of the Office of Administrative Services, and Ms. Claire Sylvia and Mr. Chad Jacobs of the City Attorney's Office were present.

IV. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 whether to disclose any action taken or discussions held in closed session regarding public employee appointment/hiring.

The Commission came out of closed session at 9:17 p.m.

Motion 04-6-28-2 (McCoy/Lynn): Moved, seconded, and unanimously passed (4-0) that the Commission not disclose any action taken or discussions held thus far in the closed session.

Motion 04-6-28-3 (Lynn/Gusukuma): Moved, seconded and unanimously passed (4-0) that the commission recess its June 28, 2004 meeting until June 30, 2004 at 5:30 p.m.

The Ethics Commission recessed this meeting at 9:20 p.m.on June 28, 2004. The Commission continued the meeting at 5:30 p.m.on June 30, 2004, in City Hall, Room 421. Present at the meeting were Chairperson Garcia, Vice-Chairperson Anglade, and members Gusukuma, Lynn and McCoy.

Motion 04-6-28-4 (Lynn/Gusukuma): Moved, seconded, and unanimously passed (5-0) that the Commission go back into closed session.

At 5:40 p.m., the Commission went back into closed session. Ms. Ana Borja-Valdes of the Office of Administrative Services, and Ms. Claire Sylvia and Mr. Chad Jacobs of the City Attorney's Office were present. The Commission came out of closed session at 6:35 p.m.

Motion 04-6-28-5 (Garcia/Anglade): Moved, seconded, and unanimously passed (5-0) that the Commission not disclose any action taken or discussions held in the closed session.

V. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

VI. Adjournment.

Motion 04-6-28-6 (Anglade/Lynn): Moved, seconded, and unanimously passed (5-0) that the Commission adjourn.

The meeting was adjourned at 6:38 p.m. on June 30, 2004.

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ETHICS COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

MICHAEL L. GARCIA
CHAIRPERSON

MICHELE ANGLADE
VICE-CHAIRPERSON

EMI GUSUKUMA
COMMISSIONER

JOE LYNN
COMMISSIONER

AUKEEN Q. MCCOY
COMMISSIONER

Agenda

PUBLIC NOTICE

The San Francisco Ethics Commission recessed its special meeting held on Monday, June 28, 2004. The meeting will be continued on Wednesday, June 30, 2004 at 5:30 p.m., in City Hall, Room 416.

Please call the Ethics Commission at 581-2300 for more information.

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Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING

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JULY 12, 2004, 5:30 P.M.
and AGENDA

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Approval of the minutes of the regular meeting of June 14, 2004, and special meeting of June 28, 2004. (Discussion and possible action.)

IV. Deputy Executive Director's report
1. Budget update
2. Limited public financing program
3. Legislative developments
4. Advice and opinions
5. Investigation and enforcement program
6. Campaign finance disclosure program
7. Electronic filing program
8. Campaign finance audit program
9. Lobbyist program
10. Campaign consultant program
11. Statements of Economic Interests
12. Sunshine Ordinance Declarations
13. Education and outreach
14. Plans for governmental ethics conference in December 2004
15. Other

V. Consideration of a draft statement of incompatible activities for the members and staff of the Ethics Commission. Under Proposition E, adopted by the voters in November 2003, all City departments, commissions and boards must submit to the Ethics Commission statements listing those outside activities that are inconsistent, incompatible or in conflict with the duties of the officer and employees of that department, commission or board. At its last meeting, the Commission began consideration of a proposed statement of incompatible activities for members and employees of the Commission. At this meeting, the Commission will consider amendments to the draft statement. A staff report and draft statement of incompatible activities will be available from the Commission office and on its web site on July 8, 2004. (Discussion and possible action.)

VI. Closed session held pursuant to the Ralph Brown Act, Government Code section 54957(b) and the Sunshine Ordinance section 67.10(b): Public Employee Appointment/Hiring: Executive Director, Ethics Commission. (Discussion and possible action.)

VII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 whether to disclose any action taken or discussions held in closed session regarding public employee appointment/hiring. (Discussion and possible action.)

Motion: The Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: public employee appointment/hiring: Executive Director, Ethics Commission.

VIII. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion and possible action.)

IX. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting. (Discussion and possible action.)

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XI. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

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Ethics Commission

July 12, 2004

(Approved 9/13/04)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

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I. Call to order and roll call.

Chairperson Michael Garcia called the meeting to order at 5:37 p.m.

COMMISSION MEMBERS PRESENT: Michael Garcia, Chairperson; Michele Anglade, Vice Chairperson; Joe Lynn, Commissioner; Waukeen McCoy Commissioner. Commissioner Emi Gusukuma arrived at 5:38 p.m.

STAFF PRESENT: Mabel Ng, Deputy Executive Director; Shaista Shaikh, Public Finance Administrator.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney; Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: David Pilpel; Anita Mayo, Pillsbury Winthrop.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Agenda for Meeting of July 12, 2004

Draft Minutes of the Regular Meeting of June 14, 2004

Draft Minutes of the Special Meeting of June 28, 2004

Approved Minutes of the Special Meeting of June 2, 2004

Approved Minutes of the Regular Meeting of May 10, 2004

Deputy Executive Director's Report for the Meeting of July 12, 2004

July 8, 2004 Memorandum from Mabel Ng regarding Ethics Commission Statement of Incompatible Activities

Materials distributed at meeting:

Civil Service Commission Comment on Departmental Statement of Incompatible Activities

Revenues Received as of June 30, 2004 and July 8, 2004

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdictions of the Ethics Commission.

There was no public comment.

III. Approval of the minutes of the Ethics Commission regular meeting of June 14, 2004, and special meeting of June 28, 2004.

- *June 14, 2004 minutes*

The Commission approved the following changes to the draft minutes of the regular meeting of June 14, 2004 (deletions in strikethrough and additions in italics and underline):

On page 3: Mr. Marsteller suggested that the Commission prioritize its ne~~e~~ds as a body to prepare for the possible add-backs.

On page 4: Commissioner Lynn questioned whether "wearing any part of the uniform" is an appropriate~~d~~ ban because wearing only part of the uniform may not lead the public to identify the person as a City official.

Motion 04-7-12-1 (McCoy/Anglade): Moved, seconded, and unanimously passed (5-0): that the Commission adopt the minutes of the June 14 regular meeting as amended.

- *June 28, 2004 minutes*

Commissioner Joe Lynn suggested that the heading of the minutes be changed to read "Meeting June 28, 2004 and continued meeting of June 30, 2004" instead of "Meeting of June 28, 2004." Deputy City Attorney Chad Jacobs explained that there was only one meeting, the meeting of June 28, 2004, which was continued to June 30, 2004.

Public Comment

David Pilpel stated that he agreed with Mr. Jacobs that there was no Commission meeting of June 30, 2004. Mr. Pilpel added that the meeting of June 28, 2004 was continued to June 30, 2004. He suggested that on page two of the minutes, the Commission insert a note about persons present on June 30. The Commission agreed to insert the language that follows below after the sentence that reads: "The Commission continued the meeting at 5:30 p.m. on June 30, 2004, in City Hall, Room 421."

Commission members present at the recessed meeting: (insert names of members present).

Motion 04-7-12-2 (Anglade/McCoy): Moved, seconded, and unanimously passed (5-0): that the Commission adopt the minutes of the June 14, 2004 regular meeting as amended.

IV. Deputy Executive Director's Report

Deputy Executive Director Mabel Ng referred the Commission to her written report. Ms. Ng reported that the Budget Committee of the Board of Supervisors voted to cut the Commission's budget by approximately $26,000. Members of the Commission and Ms. Ng then engaged in a discussion regarding the possibility of addbacks to the Commission's budget.

Ms. Ng reported that staff will be conducting a workshop for all candidates on Wednesday, July 14. She mentioned that staff recently conducted a workshop on the Commission's On-Line Filing System ("OLFS") and updated the OLFS handbook. She informed the Commission that the demonstration of OLFS can be accessed on its website. Ms. Ng took the opportunity to thank the interns who have helped the Commission this year. She acknowledged two interns who were present at the meeting, Surabhi Saraswat, a senior at Princeton University and Kristian Ongoco, a graduate student at San Francisco State University. The Commissioners also thanked the interns.

Ms. Ng informed the Commission that on June 22, the Board of Supervisors adopted legislation to require the equal treatment of permit applicants and the adoption of a permit processing code of conduct. She mentioned that the Ethics Commission will be required to adopt a code of conduct for permit processing no later than 60 days after the effective date of the legislation, which is December 15, 2004.

Commissioner Lynn stated that the McCarthy Center for Public Service and the Common Good at the University of San Francisco is proposing that its graduate students assist the Commission with its campaign finance database. Ms. Ng stated that she was scheduled to meet with representatives of the Center soon.

Public Comment

Mr. Pilpel stated that he testified in support of the Commission's budget on July

1 before the Budget Committee. He stated that Supervisor Daly has indicated his willingness to calendar a supplemental for the Commission if the Commission needs to propose a supplemental for the public financing program. He reminded the Commission that it should calendar a discussion of whether there are sufficient funds for all candidates who apply for public financing. Mr. Pilpel suggested that for early next year, the Commission prioritize discussion of legislative developments. He stated that he appreciated the inclusion of the status of audits in the Deputy Executive Director's Report and that he would like to see a list of lobbyists and campaign consultants.

Chair Garcia noted that there will be no regular meeting of the Commission in August. Given that the deadline for submitting Declarations for Public Funds is August 24, Chair Garcia anticipated that there would be a special meeting between August 25 and September 2 so that the Commission may consider whether it is necessary to prorate public funds.

V. Discussion of statement of incompatible activities for members and staff of the Ethics Commission.

Ms. Ng highlighted the changes and amendments that were made to the Commission's Statement of Incompatible Activities since its last meeting. Commissioner Emi Gusukuma suggested changes to the language in item I.A. There was some discussion about the suggested changes, which included deletion of the term "fundraisers." There was also some discussion about attendance at events sponsored by general purpose committees or clubs.

The Commission's suggested changes to item I.A. are as follows:

Members and employees of the Ethics Commission may not attend any ~~campaign fundraisers or other campaign-related events sponsored by a City officer, candidate for City office, ballot measure committee, political party, or any other person or entity. A campaign-related event is an~~ event that has as a primary purpose ~~sponsoring~~ *supporting* or opposing *or fundraising for or against* a candidate for City *elective* office, local ballot measure, or City officer running for any office.

With respect to item I.C., Commissioner Waukeen McCoy suggested that the term "political" be deleted.

Commissioner Michele Anglade asked how affected persons would learn about amendments to the statement. Ms. Ng explained that when the statement is formally adopted by the Commission, staff and commissioners will be notified. Deputy City Attorney Claire Sylvia added that the process for adopting the statement would also apply to adopting amendments; that is, the law provides for notice to employees and Commissioners when making amendments.

Public Comment:

Mr. Pilpel expressed concern about deleting the term "fundraisers" from the text of item I.A. Mr. Pilpel stated that I.C. covered county general purpose committees but expressed concern that item I.A. did not include county general purpose committees or political clubs. He asked the Commission to consider what an appropriate level of participation would be. With respect to item VI, Mr. Pilpel asked whether notice given to the Executive Director regarding outside activities will be subject to public disclosure.

Anita Mayo, Pillsbury Winthrop, requested that the City Attorney provide a written opinion as to whether attendance at events sponsored by general purpose committees is covered by the Charter. Ms. Mayo stated that it would be a policy decision on the Commission's part to cover this issue in item I.A.

Motion 04-7-12-3 (Gusukuma/Anglade): Moved, seconded, and unanimously passed (5-0): that the Commission adopt as amended its draft Statement of Incompatible Activities.

VI. Closed session held pursuant to the Ralph Brown Act, Government Code section 54957(b) and the Sunshine Ordinance section 67.10(b): Public Employee Appointment/Hiring: Executive Director, Ethics Commission.

Motion 04-7-12-4 (Gusukuma/McCoy): Moved, seconded, and unanimously passed (5-0): that the Commission go into closed session.

At 6:35 p.m., the Commission went into a closed session. Ms. Ng and Ms. Shaikh departed. Present at the closed session were: Members of the Ethics Commission; Ms. Sylvia; Mr. Jacobs; Ms. Ana Borja-Valdes, Administrative Services.

At 9:20 p.m., the Commission reconvened its regularly-scheduled meeting. No Commission staff members were present.

VII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 whether to disclose any action taken or discussions held in closed session regarding public employee appointment/hiring. (Discussion and possible action.)

Motion 04-7-12-5 (McCoy/Lynn): Moved, seconded, and unanimously passed (5-0): that the Commission not disclose any action taken or discussions held in closed session.

VIII. Commissioner questions and proposed future agenda items.

Commissioner Anglade asked that the Commission consider the issue of participation at fundraisers. Commissioner Gusukuma requested that the City Attorney provide advice on the Commissioners' ability to attend fundraisers.

IX. Summary of Commission Action.

The Commission considered and adopted a draft Statement of Incompatible Activities for officers and members of the Ethics Commission. The Commission also cancelled its regular meeting of August 9 but will meet between August 25 and September 2, at a time to be set, to discuss whether proration of public funds is necessary.

X. Public Comment

There was no public comment.

XI. Adjournment.

Motion 04-07-12-6 (Lynn/Gusukuma): Moved, seconded, and unanimously passed (5-0): That the Commission adjourn its meeting.

The meeting was adjourned at 9:25 p.m.

Respectfully submitted,

_____

Shaista Shaikh

Public Finance Administrator

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Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
AUGUST 4, 2004, 5:30 P.M.
and AGENDA

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Determination regarding the application of section 3.234 of the San Francisco Campaign and Governmental Conduct Code to the appointment of Supervisor Tony Hall as executive director of the Treasure Island Development Authority and whether to grant a waiver under sections 3.234(a)(1)(E) and (a)(2)(B). A staff report on this item will be available from the Commission office and on its website on August 3, 2004. (Discussion and possible action.)**

IV. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

V. **Adjournment.**

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Ethics Commission

August 4, 2004

(Approved 9/13/04)

Minutes of the Special Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

August 4, 2004

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I. Call to order and roll call.

Chairperson Michael Garcia called the meeting to order at 5:52 p.m.

COMMISSION MEMBERS PRESENT: Michael Garcia, Chairperson; Michele Anglade, Vice Chairperson; Waukeen McCoy, Commissioner; Joe Lynn, Commissioner; Emi Gusukuma, Commissioner.

STAFF PRESENT: Mabel Ng, Deputy Executive Director; Oliver Luby, Fines Collection Officer.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney; Deputy City Attorneys Donnell Choy and Linda Ross were also present in the audience.

OTHERS PRESENT: Eric Allen; DJ Canepa; Sue Cauthen, Sunshine Ordinance Task Force (SOTF); Sean Elsbernd; Jerrod Flores; Frank Gallagher; Margaret Gannon; Supervisor Tony Hall; Jonee Levy, President of District 3 Democratic Club; Charles Marstellar; Patrick Monette-Shaw; Pat Murphy; Ralph Ochoa; Kristian Ongoco; David Pilpel, SOTF; James Ross; Marc Salomon; unidentified reporter from the Sing Tao Daily; other unidentified members of the audience.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Notice of Special Meeting of August 4, 2004, and Amended Agenda

August 3, 2004 Memorandum from Mabel Ng regarding Supervisor Tony Hall's Request for Interpretation of San Francisco Campaign & Governmental Conduct (C&GC) Code Sec. 3.234

July 30, 2004, letter from Tony Hall to the Ethics Commission

July 30, 2004, letter from Tony Hall to Mabel Ng

August 4, 2004, Draft Advice letter from Mabel Ng, San Francisco Ethics Commission, to Tony Hall

San Francisco Campaign & Governmental Conduct Code Sec. 3.234 (Post-Employment Restrictions) and Ethics Commission Regulations 3.234-1 (Permanent Restrictions on Representing and Assisting Others in Particular Matters), 3.234-2 (One Year Restriction on Communicating with Former Department), 3.234-3 (Restrictions on Future Employment with Parties that Contract with the City), 3.234-4 (Waivers), & 3.234-5 (Definitions)

August 4, 2004, facsimile transmittal cover sheet from Frank Gallagher to the Ethics Commission, with attached August 4, 2004, letter from Tony Hall to the Ethics Commission

1998 Proposition K (Use and Control of Treasurer Island): Opponent's Argument Against and Rebuttal to Opponent's Argument Against

San Francisco Ethics Commission Bylaws: Article VII (Meetings)

California Government Code Sec. 84308 (Contributions to Officers; Disqualification)

Materials distributed at meeting:

August 4, 2004, letter from Supervisor Matt Gonzalez to the Treasure Island Development Authority

Last three paragraphs of Ethics Commission Regulation 3.234-3 (Restrictions on Future Employment with Parties that Contract with the City (Post-Employment Restrictions))

Commissioner Lynn raised a point of order, questioning whether the Ethics Commission bylaws regarding the meeting had been followed, specifically posting notice of the meeting 72 hours in advance. Deputy Executive Director Mabel Ng said that the notice was posted on Friday (July 30, 2004) and that Monday morning (August 2, 2004) was the first date that the notice could be mailed to the list of interested persons. Commissioner Lynn asked why the copy of the notice that he received was post-marked August 3, 2004, and Ms. Ng said that she had no explanation.

Commissioner Lynn asked how he would express his concern that the meeting was not properly posted and noticed. Deputy City Attorney Chad Jacobs said that he thought that raising a motion to the Commission was sufficient. Commissioner Lynn motioned to adjourn the meeting due to insufficient notice and posting. The motion failed for lack of a second.

Commissioner Gusukuma asked if the bylaws said "mailed" or "posted;" it was clarified that they say "posted" (San Francisco Ethics Commission Bylaws, Article VII, Sec. 5). [While still in session, Mr. Jacobs reviewed that law. During Mr. Jacobs' review, Commissioner Lynn told Chairperson Garcia and Commissioner Anglade that he thought that their current quiet discussion of meeting notice and the 5-days-in-advance requirement for waivers of post-employment restrictions should be held in public.] Mr. Jacobs explained that Section 67.6(f) of the Sunshine Ordinance governs the notice requirements for special meetings[1]. He said that the relevant notice requirement of Section 67.6(e) was "notice delivered personally or by mail, e-mail, or facsimile as reasonably requested." He reasoned, therefore, that emailing notice to each of the commissioners by July 30, 2004, would have satisfied Sunshine procedures.

Commissioner Lynn noted that he understood that notice was not provided to interested persons and media until August 2, 2004, which was less than 72 hours in advance of the meeting. Mr. Jacobs noted part of Section 67.6(f), "to each member of such policy body and the local media who have requested written notice of special meetings in writing," and said that he was not sure if there were members of the media that had requested notice of special meetings in writing. Ms. Ng said she was not sure if there were any local media on the interested persons list. Commissioner Lynn responded that they were then not sure if the meeting had been properly noticed. Mr. Jacobs said that the question was rather if there were any members of the media who had requested in writing notice of *special* meetings.

Commissioner Lynn reminded Mr. Jacobs that there was also the 72 hour notice provision in the bylaws. Mr. Jacobs said that Article VII, Sec. 5, of the Bylaws used the word "posted," not "mailed." Commissioner Lynn indicated that "posted" could include "mailed" and Mr. Jacobs said that the use of "mailed" and "posted" within the same Bylaws section indicated that the meanings were different. Chairperson Garcia directed the discussion to the next item.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Charles Marstellar asked why the Commission did not wait until the next regular meeting to address Supervisor Tony Hall's request for a waiver of the post-employment restrictions. He noted that conflict of interest regulations were supposed to be liberally construed, which meant literally construed, not technically construed. Mr. Marstellar said that some of the requirements of Regulation 3.234-4 (Waivers) were addressed effectively in the staff memo. However, he read from

Regulation 3.234-4 (a)(3) (Consideration of waiver requests)[2]. He noted that the Commission may not consider any request that does not comply with that section and concluded that the meeting at hand was not legal.

Patrick Monette-Shaw said that he had great respect for Supervisor Hall but thought that the Commission was splitting hairs on two issues: First, the Commission should not consider a waiver request from an admitted sitting employee; Second, the last page of the staff memo, stated that Treasure Island Development Authority (TIDA) is a separate legal entity, whereas Sup. Hall's August 4, 2004, letter, stated, "While [TIDA] is a legal entity separate from the City & County of San Francisco under the California Community Redevelopment Law (CCRL), it must act exclusively for and with authorization from the City & County of San Francisco." Mr. Monette-Shaw concluded that treating TIDA as a separate legal entity was splitting hairs because it clearly could not act without the permission of the Board of Supervisors.

Margaret Gannon, an attorney living in District 7, opposed the draft opinion letter. She said that she believed that opinions should not be offered to a candidate in advance of an election. Ms. Gannon also said that, if the waiver were granted, the Commission would become the handmaiden of job hunting incumbents. She said that the Commission should deny the waiver until Hall resigned his seat.

Jonee Levy, President of District 3 Democratic Club, said that it was not under the purview of the Deputy Executive Director to overturn the will of the people, referring to Proposition E adopted by the voters in November 2003. She said that the people, by a large majority, had indicated that they did not want a game of musical chairs.

Marc Salomon, speaking for himself, said that the meeting was illegal because it was improperly noticed. He also noted that the amendment to the agenda was not properly noticed. In addition, he said that the agenda item was not proper under the Commission's own rules. Mr. Salomon said that he did not want the acting executive director putting words in people's mouths as to what the will of the voters was.

David Pilpel, speaking only for himself, said that he disagreed with Mr. Jacobs regarding his interpretation of the Sunshine Ordinance. He said that posting to the internet and delivery to the library are not sufficient to meet the notice requirement. He said that he believed that the language and intent of the ordinance meant that the agenda or notice had to be mailed 72 hours prior to a meeting. He noted that the previous requirement was 24 hours and that it was expanded to 72 hours precisely to prevent meetings such as this one. Mr. Pilpel noted that he had not received the agenda until August 4, 2004 and that it had been mailed on August 3, 2004, adding that he did not receive the full packet. He added that he expected similar circumstances to occur again and said that the Commission should have a clear process for consideration of a case. Noting that he was not speaking to the merits of the request, he suggested that the Commission should consider whether to recess the meeting.

III. Determination regarding the application of section 3.234 of the San Francisco Campaign and Governmental Conduct Code to the appointment of Supervisor Tony Hall as executive director of the Treasure Island Development Authority and whether to grant a waiver under sections 3.234(a)(1)(E) and (a)(2)(B).

Chairperson Garcia said that there were basically two intertwined, interdependent issues at hand, which would be dealt with sequentially: (1) the draft advice letter to Supervisor Hall that interpreted the application of Campaign & Governmental Conduct Code post-employment restrictions to Sup. Hall; (2) staff's recommendation in the advice letter that the Commission consider Hall's application for a waiver of post-employment restrictions, allowing Hall to communicate with City officers and employees on behalf of TIDA.

Ms. Ng noted that the City & County of San Francisco set up TIDA as a separate legal entity, which has the authority to hire an Executive Director and which was considering hiring Supervisor Hall. The Executive Director of TIDA would be required to communicate with officers of San Francisco on behalf of TIDA. Ms. Ng summarized the applicability of four different post-employment restrictions: (1) the permanent ban on assisting others in matters the officer personally participated in *would not* apply, based on the facts provided by Sup. Hall (Sec. 3.234(a)(1)(A)); (2) the one-year restriction on communicating with the representatives of the City & County of San Francisco on behalf of another entity *would* apply to Sup. Hall, since TIDA is a separate legal entity (Sec. 3.234(a)(1)(D)); (3) the one-year ban on employment with an entity that has entered into a contract with the City & County within 12 months prior to the officer's separation from the City & County *would not* apply to Sup. Hall, since Sup. Hall informed the Commission that he had not personally or substantially participated in the award of any contract between the City & County and TIDA within the last 12 months (Sec. 3.234(a)(2)(A)); (4) the one-year ban on former Mayor or members of the Board of Supervisors regarding full-time, compensated appointment with the City & County *would not* apply to Hall, since TIDA is a separate legal entity (Sec. 3.234(b)(2)). Regarding the first prohibition, Ms. Ng noted that she requested that Sup. Hall notify the Commission if any facts changed. Regarding the last prohibition, Ms. Ng noted that prohibition, on the books since 1932, appeared to have been created to prevent public officials from creating lucrative positions for themselves before they leave office and that this law did not apply to Sup. Hall insomuch as he did not participate in creating TIDA.

Ralph Ochoa, the attorney representing Sup. Hall, agreed with staff's advice letter. He said: the TIDA position would advance the City & County's interests; leaving his current position and taking the TIDA position did not create a potential for financial gain by Sup. Hall; and, under state redevelopment law, TIDA was a separate legal entity. Commissioner Anglade said that she was a little confused about TIDA, noting that, on one hand it, was benefiting the City & County and within San Francisco's jurisdiction and, on the other hand, it was a state-created entity. Mr. Ochoa discussed various agencies that TIDA works with. He also noted that TIDA must bring any contracts over $1 million before the Board of Supervisors. Commissioner Anglade said that she did not see TIDA as being beneficial to the City & County in every instance. Mr. Ochoa likened the San Francisco/TIDA relationship to corporation and

its subsidiary.

Commissioner Lynn said he had concerns not raised by the staff memo. First, noting the previously mentioned technical explanation that TIDA is set up by state law, Commissioner Lynn said that the 1998 Proposition K provides, "the leasing, subleasing, and development of Treasure Island shall be subject to all state laws and city ordinances proscribing conflicts of interest and incompatible activities." He concluded that, as far as the voters were concerned, they wanted city agencies to treat Treasure Island as though it were part of the City & County. Mr. Ochoa said that the "as if" concept of Commissioner Lynn's reasoning was the pivotal part because TIDA is not legally part of the City & County, even though the voters would want it to comply with conflict of interest laws per Proposition K. Second, Commissioner Lynn noted Ms. Ng's explanation that the Sec. 3.234(b)(2) protects the public from supervisors creating lucrative positions for themselves and asked if Mr. Ochoa agreed if it generally protected the public from the Mayor to offer a lucrative position to a supervisor in return for that supervisor's vote on a controversial issue. Mr. Ochoa answered that this was "mixing apples & oranges" and that he thought it was beyond question that Sup. Hall has the capability and experience to be an excellent executive director for TIDA. Commissioner Lynn replied that it was not the Ethics Commission's function to vouch for the competency or integrity of a candidate in the middle of an election cycle. Mr. Ochoa said that he understood and that Sup. Hall's competency and integrity were relevant to the hypothetical of whether there was a quid pro quo arrangement between Hall and the Mayor.

Commissioner Anglade asked why there was urgency for the waiver. Mr. Ochoa answered that TIDA and Sup. Hall had entered into a contract where Hall would resign by 3 pm tomorrow, subject to the condition of a grant of waiver by the Commission. Mr. Ochoa added that, notwithstanding the rumors of the last couple of weeks, the offer from the Mayor came late and it was difficult for all of the parties to meet the letter of the law. Ms. Ng added that the filing deadline for registering as a candidate for Sup. Hall's District 7 seat was August 6, 2004, potentially extendable to August 11, 2004. She said that Hall's decision to go to TIDA affected whether other candidates would run. Ms. Ng also said that another reason for the urgency was whether Sup. Hall could take the position and be effective within it if his ability to communicate were limited by post-employment restrictions. Commissioner Anglade said that the issue was not simply communication but intent to influence, and that annual reports issued by TIDA to the Board of Supervisors were not necessarily influencing. Ms. Ng gave some hypothetical examples of a former officer not being able to communicate with the former department for the purpose of influencing it and said that plans submitted by TIDA to the Board of Supervisors could be for the purpose of influencing. Ms. Ng said that Sup. Hall's duties at the Board of Supervisors and TIDA would coincide and were co-extensive to the extent that both positions were for working for the interests of San Francisco. Chairperson Garcia agreed that, for the most part, a benefit to TIDA was a benefit to the City & County but noted that their interests were not congruent to the extent that TIDA would compete with other departments.

Chairperson Garcia noted, as per the staff memo, that a grant of waiver could be accomplished in one of three ways: (1) grant a waiver contingent upon Hall's submission of his resignation from the Board of Supervisors; (2) include the waiver within the language of the advice letter; or (3) tell Hall to resubmit his request for a

waiver after resignation, with the understanding that the waiver would be granted later pro forma or via delegation to the Acting Executive Director. Chairperson Garcia said that these possibilities indicated that the Commission was mindful that a resignation had to take place at some point in order to grant a waiver.

Commissioner McCoy said that there is an idea that granting the waiver to Sup. Hall would create the potential for unfair influence. Mr. Ochoa said that Sup. Hall's proven experience and leadership is precisely why the TIDA board wanted him.

Commissioner Gusukuma asked where TIDA's money came from. Mr. Ochoa said it was from the City & County, but also mentioned cash flow from property development being used to service debt. Deputy City Attorney Chad Jacobs said that city attorney deputies who are experts on redevelopment law had just informed him that money for TIDA comes from the running of Treasure Island (rent, development agreements) and is merely appropriated and approved by the Board of Supervisors, rather than initially becoming part of the general fund.

Commissioner Lynn asked when Executive Director AnnMarie Conroy's intention to leave TIDA was known and Mr. Ochoa said he was not sure.

Patrick Monette-Shaw commented that public comment was normally taken after a motion. He further said that the fact that TIDA's money had to be approved by the Board of Supervisors and that it acts for the City & County indicated that Mr. Ochoa was splitting hairs when he said that TIDA was, in reality, not part of the City & County. Mr. Monette-Shaw disagreed with the staff draft opinion that C&GC Code Sec. 3.234(b)(2) did not apply to Sup. Hall's situation, saying that people may have generally not wanted the Mayor or members of the Board moving into positions with the City & County, whether or not they created them. He also said that issuing a waiver on a conditional deal was odd, particularly since other people thinking of running had not entered the race yet and that the filing fee for registering as a candidate was not too much.

Chairperson Garcia said that a motion should deal with the advice letter before it is sent to the offices of the City Attorney and District Attorney and that it should either grant waiver by accepting the advice letter or move to consider the waiver. Commissioner Anglade moved to accept the advice letter pending determination on the waiver, seconded by Commissioner McCoy.

Patrick Monette-Shaw stated that the Ethics Commission needed to get a firm grip on parliamentary procedure. He said that the Commission would be setting the wrong precedent by having the deputy executive director rush the process through when a new Ethics Commission executive director was coming on board soon, who Monette-Shaw said would not bring the odor of improper elections activity which has been all over the press for years. Monette-Shaw said that the Ryan White Care Council, with a

multi-million dollar budget, had hired an ethicist to teach them and suggested that the Commission hire the same man.

Marc Salomon said that he had a problem with the author of the advice letter trying to interpret the public will in order to expediently get to the next step in the process. He commended the Commission on hiring a new Executive Director but mentioned events (destruction of documents, Harris matter last year) showing a pattern of behavior that puts advice letters issued by the Commission out far to the right of the San Francisco political mainstream and in the service of power, not people. Mr. Salomon asked about the typical timeline between when an advice letter is requested and then produced and said that he believed that it was a period of weeks if not months. Mr. Salomon noted that, in the middle of a semi-annual filing period and while gearing up for public financing, staff had somehow found the staff resources to engineer the response to Hall in 72 hours. He said that he hoped the Commission would use the freedom it has due to its independence to act differently from commissions that serve at the pleasure of the Mayor.

Commissioner Anglade asked Mr. Jacobs if the matter at hand was something that the office of the City Attorney would sign off on. Mr. Jacobs said that, while he had not spoken with the City Attorney himself about the advice letter, the advice letter was sound and legally defensible. Commissioner Anglade asked if the advice letter procedure used was typical. Mr. Jacobs said that the typical procedure is that any person may request an opinion from the Ethics Commission. He noted that concurrence with the advice letter by the City Attorney and District Attorney and compliance with the advice letter grants immunity from the law. Mr Jacobs referred her to a discussion on issuing advice letters that was had at a previous meeting.

Commissioner Lynn said that, since Sup. Hall participated in the budget of TIDA, he had participated in the award of a City contract to TIDA, implicating C&GC Code Sec. 3.234(b)(2). Mr. Jacobs said that the Commission would have to interpret this. He advised that the awarding of the budget was not a typical contract.

Commissioner Lynn said that he was going to vote against the motion. He was concerned about the precedent that would be set, and not specifically Sup. Hall, noting that Proposition K instructed that TIDA was part of the City & County for purposes of conflicts of interests and incompatibility. He compared the effect of Proposition K to "piercing the corporate veil," noting that, as with a corporation where you have a legal fiction separate from reality, you can look through one identity such that it becomes one with another identity. Commissioner Lynn also said that there was an appearance of impropriety: if Sup. Hall is allowed to go on to TIDA, the Mayor in the future will be able to dangle an appointment to a supervisor during a hotly contested race. In addition, regarding the contractor provision (C&GC Code Sec. 3.234(a)(2)(A)), Commissioner Lynn said there was another appearance of impropriety: by granting a waiver, the Commission would be allowing someone who participated in awarding money to TIDA to benefit from that award as an executive director one month later. Commissioner Lynn said that the preamble of the law that the Commission was interpreting instructed the Commission to interpret the law liberally. He also said that he believed more in the second part of Sup. Hall's letter, where he says that TIDA is basically the City & County, than in the first part.

Chairperson Garcia said that he would vote for the motion. He said that he deeply resented Commissioner Lynn's comment about the Mayor dangling appointments during hotly contested campaigns because it was irrelevant, whether or not it was true. Chairperson Garcia said that, if Sup. Hall were involved in a quid pro quo situation due to voting as supervisor to benefit TIDA, there are 11 supervisors and Hall's vote was diffuse. He also questioned whether that too was relevant. He said that the only thing the meeting was for was to consider whether to accept the staff's draft advice letter regarding Sec. 3.234, and also mentioned that the opinion's author's (Ms. Ng) character had been impugned earlier in the meeting.

Commissioner Gusukuma asked Commissioner Lynn if his argument was that Proposition K mandates that the Commission treat Treasure Island, TIDA, or both as subject to local laws; he affirmed that it was. She asked if that was why he believed TIDA was part of the City & County and he said that he thought that it was the whole basis of the 1998 ballot measure. Commissioner Gusukuma asked Mr. Jacobs if the State Board of Education was an arm of the state; Mr. Jacobs said that it was a separate legal entity. Commissioner Gusukuma asked if it was subject to local conflict of interest laws; Mr. Jacobs answered that the local conflict of interest laws do not apply to members of the School Board while, due to state provisions, local campaign finance laws did apply to members of the School Board.

Commissioner Anglade said that she was vacillating on the motion. She said that a carte blanche waiver would involve a lot and that a situation could arise in the future which would require a use of his influence. Mr. Ochoa said that the prospective waiver given by the Commission would only apply to communications made in representing TIDA. Also, as a point of clarification, Mr. Ochoa said that, while Sup. Hall did vote on the TIDA budget, he did so before the offer of the position came.

Commissioner Anglade said that it would be unfortunate if a candidate who is well regarded because of his experience and who members of the City want representing a particular interest cannot represent that interest because of a conflict. Chairperson Garcia said that undue influence would not apply in this case because Sup. Hall's work for TIDA would benefit the citizens. He added that he believed that the law contemplated that people could take positions unless it was demonstrated that harm would be done to the citizens. Commissioner Lynn said that the undue influence criteria did not apply to this motion, only to whether or not there was a waiver, and Chairperson Garcia then agreed. Commissioner Lynn reminded the other commissioners that, if Sup. Hall remains as a candidate, their comments about his competency could be used in the campaign, which is the reason his comments focused on the precedent, not on Sup. Hall. He further said that he was not suggesting that Sup. Hall's vote could be bought but that it could happen in the future which would weaken public trust in the integrity of government and that the Commission's function was to ensure that such public trust in the integrity of government was as high a standard as possible.

In response to previous public comment and Commissioner Lynn's comments, Commissioner Gusukuma said that it was important for the public to know that the Commissioners were basing their decisions on the law. Noting Commissioner Lynn's comment about being bound by the will of the people, she said that they were

certainly bound by the letter of the law. She said that she agreed with the staff's advice letter based on the facts in the letter and what was currently known about TIDA. Although Commissioner Gusukuma said that the Commission did not have TIDA's founding documents in front of them, the advice letter granted immunities only if the facts in the letter are true. Mr. Jacobs affirmed the latter understanding. Noting expressed concerns that the Commission was supposed to impede the political machinations of City Hall, Commissioner Gusukuma said people failed to recognize that the reason the *Chronicle* had information enabling it to write about the matter at hand was because the laws were working and candidates were disclosing their contributions, giving the press and the public access. She said that, to the extent Sup. Hall would have conflicts, he would have to disclose them and recuse himself. She added that making personal comments about people's backgrounds was not necessary or appreciated.

Motion 04-8-4-1 (Anglade/McCoy): Moved, seconded, and passed (4-1) (Lynn opposing): that the Commission approve the formal advice letter by staff to Sup. Hall, pending determination on Hall's request for waiver.

Chairperson Garcia asked if there was a motion regarding the waiver. Commissioner Lynn called a point of order on the waiver issue. He said that there were procedural irregularities involving whether a waiver motion could be handled at a special meeting. Commissioner Lynn said that a waiver can only be granted to a former official and that Sup. Hall still sat on the board and remained in a position of budgetary authority over the Ethics Commission. He concluded that it was improper to consider the request of someone who was not a former official.

Patrick Monette-Shaw twice sought public comment, and Chairperson Garcia said that he was out of order.

Commissioner McCoy asked Mr. Jacobs to provide advice on Regulation 3.234-4(a)(3) (Consideration of waiver requests) and what facts justified their compliance with that provision, noting that public comment had mentioned it. Mr. Jacobs said that the provision was drafted not to prevent the Commission from considering waiver requests but rather to require the Commission to consider waiver requests if such requests complied with the Regulation (regularly scheduled meeting and a request received at least 5 days prior to the meeting). Commissioner Lynn clarified that the Regulation states "five business days," and also "The Commission shall not consider at its next meeting any waiver request that does not comply with this deadline." Mr. Jacobs said that the Regulation did not apply to special meetings.

Commissioner Lynn said that the Commission could not consider a waiver request from a current employee. Mr. Jacobs said that the law did not prohibit the Commission from holding a hearing to discuss the issue or approve an advice letter and that, if the Commission decided to grant the waiver, the procedures outlined in the staff memo would work, with the option of having Hall first resign and then resubmit his request being the safest procedure. Commissioner Anglade said that another option was not

making a determination on waiver until the August 9, 2004, meeting but then withdrew this recommendation. Chairperson Garcia noted that her suggestion did not address the time constraints of registering for the election by August 6, 2004.

Commissioner Lynn said that the five-business-days requirement had the purpose of allowing staff sufficient time to prepare materials for the meeting as well as providing notice three days in advance of the meeting. He noted that the staff materials did not address the issues concerning Proposition K and other issues which needed a full airing. Commissioner Lynn said that another purpose of the five-day requirement was to allow for full public participation, which would not be possible for some people who received the mailed notice on August 4, 2004, as he did, but after they returned home from work when the meeting was already in progress. Chairperson Garcia said that they had already been over the 72 hour notice requirement. Commissioner Lynn said that his earlier argument had been over whether the legal notice requirement was met and that now he was raising a public policy issue as to whether or not going forward without the five-days requirement respects the public. He added that, if the waiver request had been received a week ago, there would not be notice problems and the materials would have included staff's position on Proposition K and other matters.

Commissioner Lynn said that the request for waiver also did not comply with Regulation 3.234-4(a)(1)[3]. He asked that the Commission remove itself from electoral politics and honor the Regulation, specifically, that the Commission not consider any request "at its next meeting" (the current meeting) that does not comply with the Regulation. Chairperson Garcia said that he was not aware that the Mayor was doing anything other than filling the vacant TIDA position with the best person and that he did not know that Commissioner Lynn knew what the Mayor's thoughts were pertaining to "electoral politics." Commissioner Lynn said that he mentioned electoral politics because the August 6, 2004, filing deadline had been given as the reason for the urgency of the waiver request. Chairperson Garcia said that using the word "politics" regarding a filing deadline implied something nefarious and suggested using different terminology and Commissioner Lynn said that he had the highest respect for politics but that the Commission should not be involved in it.

Commissioner McCoy asked what the consequences would be if they were challenged under the Regulation (noting that the meeting copy of Section 3.234-4 was miss-marked; [subsections (3), (4), & (5) were marked (1), (2), & (3)]). Mr. Jacobs said he would refrain from giving advice about how someone could sue the Commission. He advised that the regulation would not preclude the Commission from considering the waiver request during the current meeting and that the City Attorney could defend against a challenge to such action. Commissioner Anglade said that one part of 3.234-4(a)(3), "The Commission may set reasonable time limits on such presentations in accordance with the Sunshine Ordinance and the Brown Act" supported Mr. Jacobs' position. Commissioner McCoy said that he did not have problem with dealing with a waiver during a special meeting but wondered if the request needed to be made five days in advance of the special meeting. Mr. Jacobs said he was confident that a decision would be upheld even if challenged.

Commissioner Lynn asked if Sup. Hall would be willing to indemnify the Commission if

the procedure were challenged in court and Mr. Ochoa said no. Commissioner McCoy said that it was the Commission's decision to make.

As Commissioner Anglade tried to make a motion to consider the waiver, Mr. Jacobs said that a point of order had been made and that, under the rules, this required the Chair to make a ruling. Chairperson Garcia said that the Commission would move on to consider the request for waiver. Commissioner Lynn made a motion to overturn the Chair's ruling, which failed for lack of a second. After some commotion in the audience, Chairperson Garcia asked that comments not be yelled out from the floor.

The Commissioners discussed the phrasing of a motion granting a waiver. Commissioner Anglade, seconded by Chairperson Garica, moved to grant a delayed waiver, effective at 5 pm, August, 5, 2004. After the motion was made, additional public comment was taken. Patrick Monette-Shaw said that he was not trying impugn Mabel Ng's character and Chairperson Garcia said that his earlier comment was referring to another speaker. Mr. Monette-Shaw stated that the waiver was improper because it had not been approved by the City Attorney's office. Mr. Monette-Shaw noted that a successful challenge to the waiver procedure would leave Hall without either job and started to comment on Hall's seven children. Commissioner Lynn said that he thought that Mr. Monette-Shaw was out of order. Mr. Monette-Shaw clarified that he thought the Commission should think of Sup. Hall's family before using bad procedure. Chairperson Garcia explained that disagreement by the City Attorney and the District Attorney over the Commission's advice letter would mean that the advice letter did not grant any immunity. As for the waiver, Chairperson Garcia said that there was no required review of that decision and that it would take effect regardless of whether there was disagreement over the advice letter.

Marc Salomon commented that the Commission may not consider a waiver from someone other than a former employee and thus the motion was out of order. He said that the Commission's rush was exposing the Commission to a lawsuit based on several laws and that the August 6, 2004, candidacy filing deadline did not require the rush. Mr. Salomon also said that some of Chairperson Garcia's comments during the meeting about Sup. Hall, though he agreed with them, were improper due to the fact that Hall was a candidate and suggested that Garcia withdraw his second. He recommended dealing with the waiver request at a future regular meeting. Mr. Salomon concluded that he did not think the District Attorney would contest the Commission's actions because she was treated favorably by the Commission last year.

Charles Marstellar referred to another Proposition K, adopted in 1993, which he said gave the Commission the task of insulating laws governing conduct, integrity, and campaign finance from the political process. He said that he was concerned that the public will perceive the Commission as involved in a rushed decision that, prima facie, gives the appearance of clear violation of the Commission's own rules. Mr. Marstellar pointed out the August 4, 2004, *Chronicle* article, which he said he had nothing to do with, which started to raise questions about process. He noted that there were TIDA and Ethics Commission meetings held around the same time to expedite the decision, which he said could have been considered during a regular meeting on August 9, 2004. He said that he was actually angry to have to address the Commission on its own rules and, by implication, disparage Sup. Hall for the TIDA job. He said that the

new Executive Director for the Commission was stepping into a very difficult situation, that there would be widespread criticism of the Commission, and that the integrity of the Commission and its public image would be inhibited by its actions tonight, as they had been in a number of other instances in the past two years. He noted that it was the perception of various media editorial boards that we are at a turning point with the new Ethics Commission Executive Director.

Commissioner Anglade brought up Ms. Ng's earlier mention that the August 6, 2004, candidate filing deadline for the district 7 Board member race could be extended. Ms. Ng explained that, under the Elections Code, if an incumbent does not file election papers by the August 6, 2004, nomination deadline, there is a five day extension. Commissioner Lynn asked if it was an automatic extension and Ms. Ng was not sure. Eric Allen called from the floor, "It's automatic," and Commissioner Anglade thanked him. Noting that the public thinks that the Commission is bending over backwards for the waiver request, she said that she was really thinking of the other candidates for District 7.

On the motion, Mr. Ochoa clarified that TIDA had offered Sup. Hall the position of Executive Director on the condition subsequent that he resign by 3 pm, August, 5, 2004, and suggested amending the motion granting waiver to be effective at 2 pm rather than 5 pm.

Commissioner Gusukuma said that the perception that the Commission could have waited until the next regularly scheduled meeting was not an option. Commissioner Gusukuma said that there was a memo on the Regulation at issue, which she thought seemed ambiguous. Since she was not on the Commission when it was passed, she wanted to see the memo. She asked for a brief recess so they could examine it. Mr. Jacobs said that he could obtain the Regulation memo from his office.

Motion 04-8-4-2 (Anglade/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the Commission take a recess until 8:15 pm.

The Commission reconvened at 8:30 pm.

The Commission discussed the wording of the motion that had been made. Commissioner Anglade revised her motion for the waiver to be effective by 2 pm or upon Sup. Hall's resignation, whichever was earlier, and Chairperson Garcia re-seconded.

Commissioner Lynn noted that Sup. Hall was the greatest fundraiser ever for a candidate for the Board of Supervisors, with contributions raised of over $250,000 as

of June 30, 2004, more than 2½ times the old record. He said the public may perceive campaign contributions as being subject to undue influence. He noted a law that says that you cannot accept contributions from contractors doing business with the City & County and said that he believed Sup. Hall had accepted contributions from contractors doing business with TIDA, although he was not sure because staff had not discussed the issue. Commissioner Lynn said that he asked that Hall's campaign finance statements be made available to the Commissioners but that staff was extraordinarily busy. He said that the Commission is not funded to make spur of the moment decisions like the one at hand, saying that staff was so busy on August 2, 2004, that they, for the first time ever, did not post any electronic filings on the day they were received. Commissioner Lynn also said that the agenda was amended earlier that same day. He said that Hall's return of contributions received would raise the question of what would happen to the $65,000 that was already spent by Hall's campaign. Commissioner Lynn added that the Commission did not know what contributions or expenditures had been made by Hall's campaign during the month of July.

Commissioner Anglade asked why this mattered. Commissioner Lynn said that there are developers who are very interested in Treasurer Island, that Sup. Hall will be negotiating with them, and that the public may be concerned that he is negotiating with friends, via his campaign contributions exerting an undue influence on him. He said that the Commission had to give the public assurances by going through Hall's campaign finances, stating that his decisions would be suspect even if he simply returned the contributions. Commissioner McCoy said that Sup. Hall did not know about the position offer until recently. Commissioner Lynn replied that questions had been raised in the past about the date of the offer. He said that his understanding was that the job was first broached on June 19th and that Sup. Hall raised around $20,000 after that, at a fundraiser sponsored by developers. Commissioner Lynn asked if word had been leaked to the developers that Sup. Hall might be appointed to TIDA.

Commissioner Anglade said that she did not see it as any more than a possibility. Commissioner McCoy asked how the appearance of impropriety would be fixed and wondered if returning the contributions would suffice. Chairperson Garica said that whether or not Sup. Hall returned campaign contributions was irrelevant and had absolutely nothing to do with the matter at hand. Commissioner McCoy disagreed with the Chair, saying that he thought the rules supported that the Commission could look at other factors to make their own determination on impropriety. Commissioner Lynn agreed, reading from Regulation 3.234-4(a)(4): "[T]he Commission may consider: ... any other factors the Commission deems relevant." Commissioner Garcia then said that, as an individual commissioner, he had a hard time seeing the relevance of Commissioner Lynn's issue.

Mr. Ochoa said that this issue had come up at the TIDA meeting earlier in the day and that, with regard to certain press articles, Sup. Hall explained that he had received two contributions from persons in association with TIDA whom he had never met, totaling from $500 to $1,500. Mr. Ochoa said that the fundraiser noted in the press was jointly held by several groups and that Hall did not know the persons present. Mr. Ochoa said that they would compare contributions with those who have contracts with TIDA and return any they find. Commissioner McCoy thanked him, as that information was not in the materials.

Commissioner Lynn said that this contributions issue was one of the problems with holding a meeting without appropriate notice. He said that these facts should be vetted in a full public hearing. He said that Commission should not make a finding without investigating the facts and said that the current instance reminded him of the Commission's process on the Kamala Harris case last year. Commissioner Anglade said that there was sufficient notice to the meeting and that the public had shown up. Commissioner Lynn said that they did not know which members of the public had not shown up. Commissioner Anglade said that the Commission, not the public, were the factfinders. Commissioner Lynn said he had another example and Chairperson Garcia said that Commissioner Lynn had expounded enough and that he did not want to entertain any more comments on improper notice. Commissioner Lynn requested the privilege of debate and Chairperson Garcia said no. Commissioner Lynn said he had something to say which had not been discussed and Chairperson Garcia said he was not going to hope that was the case. Commissioner Lynn said that he was not going to discuss the question of improper notice and Chairperson Garcia disagreed. Commissioner Lynn said that he was commenting on the determination before them of whether there was no undue influence or unfair advantage. Chairperson Garcia asked Commissioner Lynn if he understood who might be unduely influenced or unfairly advantaged. Commissioner Lynn said that it was the nominee. Chairperson Garcia said it was the former department and referred Commissioner Lynn to C&GC Code Secs. 3.234(a)(1)(D) & (E)(i)[4]. He read subsection (a)(1)(D) post-employment restriction concerning communicating with a former department and then read part of (a)(1)(E)(i) subsection on waiver, which cites to (a)(1)(D), as follows: "At the request of a former City officer or employee, the Ethics Commission may waive any of the restrictions [in subsection (a)(1)(D)] if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage over that individual's former department." Commissioner Lynn said that the "over that individual's former department" language was not in (a)(1)(E). Chairperson Garcia said that it was clear. Commissioner Lynn asked him to point out where it was. Chairperson Garcia said that he just did. Commissioner Lynn said that he did not read the language and Chairperson Garcia disagreed.

Commissioner Lynn said that a member of the public told him during the break that the facts presented were not correct and that Treasure Island did have contracts with the City. Chairperson Garcia said that this was not before us. Commissioner Lynn said that they were being asked to make a factual finding on a rushed basis. Chairperson Garcia said that Commissioner Lynn had already expressed that the meeting was not properly noticed. Commissioner Lynn said that he had another point and Chairperson Garcia asked for a commissioner other than Lynn to speak.

Commissioner McCoy said that his concern was whether TIDA had contracts with someone who had contributed to Sup. Hall's campaign. He said that return of any such contributions would clear up the impropriety and that Mr. Ochoa said that such efforts would made by campaign. He said that this concern was relevant to whether there was potential undue influence from granting the waiver and said that the campaign's stated efforts had resolved the concern. Commissioner Lynn asked to address Commissioner McCoy's point and Chairperson Garcia asked if any commissioner other Lynn wanted to speak.

Commissioner Anglade said that the decision on waiver would be based on the facts contained in the advice letter. In addition, she suggested that Commissioner McCoy's concern about the returned contributions could possibly be added to the advice letter. Chairperson Garcia noted that the letter had already been approved. Mr. Jacobs clarified that the Commission could amend the letter by motion. In addition, he said the debate concerned the application of the post-employment restrictions and that the purpose of the 1-year post-employment restrictions was, for the most part, to create a cooling off period for any undue influence by the former official towards current employees with whom they had experience. Mr. Jacobs said that Commissioner Lynn's point was certainly a valid one that people may have concerns about; but that there were other laws, such as conflicts of interests, that addressed that situation that were not before the Commission tonight. He concluded that the Commission should focus on the purpose of the law.

Commissioner Lynn said that he was hearing, on one hand, that Treasure Island was not part of the City and, on the other hand, that it was part of the City. He said that the main issue was the precedent of the decision. Commissioner Lynn said that he believed that Mr. Marstellar had raised whether the Commission was being sophistical. Chairperson Garcia said that the Commission was not dealing any longer with the issue raised by Commissioner Lynn. He said that they would only discuss whether or not to grant a waiver. Commissioner Gusukuma asked if TIDA was or was not part of the City & County. Commissioner Lynn said that he was addressing the arguments about the congruent interests of TIDA and the City & County. He noted that the waiver law language deals with the party being represented by the former official as a private party, intending to prevent former employees from immediately becoming lobbyists. He said that the language never contemplated the former official representing another department because that was outlawed by another law. He said that granting a waiver would create a quirk in the law, which would set precedent which would undermine the will of the voters. Commissioner Anglade said that she disagreed. Commissioner McCoy said that Commissioner Lynn's comments made it sound as if the waiver law did not apply to government jobs. Commissioner Lynn said that the only reason the law applies is because it was being assumed that TIDA is not part of the City & County.

Regarding Commissioner McCoy's concerns about campaign contributions, Commissioner Lynn said the return of the contributions did not solve the conflict of interest problem because, if Sup. Hall does not run, he has to return them anyway. He said that the undue influence springs up once the contribution is made. He indicated that there might be a creative way to undue that influence but said that the burdens on staff had kept the Commission from fully vetting the proposal with the public. Chairperson Garcia asked Lynn not to go over that ground again.

Distinguishing TIDA, Chairperson Garcia said that appointment of a supervisor to the Port would affect consideration of the application of a waiver of post-employment laws. He said that saying that the TIDA issue was a loophole was misrepresentative and that he was not asking Commissioner Lynn for a response. Commissioner Lynn said that this was a public record of a hearing that could be challenged by litigation and started to ask for consideration. Chairperson Garcia interrupted him, saying that his understanding was that, if the Sunshine Ordinance Task Force were to hold that the meeting was not properly noticed, they would have to re-hold the meeting. Commissioner Lynn said he was talking about Chairperson Garcia's conduct with the

debate. Chairperson Garcia said that they would not be subject to being sued for the points that Commissioner Lynn has raised and asked Commissioner Lynn to quit dragging red herrings across the issue.

Commissioner Anglade brought up Regulation 3.234-4(a)(1). Mr. Ochoa said that a copy of the waiver request was given to the Clerk of the Board of Supervisors on August 4, 2004. Commissioner Lynn asked who exactly it was given to and Mr. Ochoa said that it was Gloria Young. Commissioner Lynn asked if she was designated by the President of the Board and Mr. Ochoa said yes. Commissioner Lynn asked when she was designated and Mr. Ochoa said he did not know. Commissioner Lynn said that the reason he was asking was that, according the Regulations, it had to be 5 business days before the current meeting. Chairperson Garcia said that the five-days rule dealt only with regular meetings [see previous discussion].

Commissioner Anglade restated her amended motion. Mr. Jacobs clarified that, from a legal perspective, the restated motion would make the waiver effective even if Sup. Hall did not resign and he suggested that she make the waiver conditional. The Commission discussed the wording of the motion and amended the motion.

Commissioner Gusukuma said she agreed that the post-employment restriction dealt with communicating with the former department. She noted that factors listed in Regulation 3.234-4(a)(4) that the Commission was to consider. She asked Mr. Ochoa to address the scope and extent of the communication that those factors referred to, such as talking to the Board about the budget and contracts over $1 million. Mr. Ochoa mentioned other matters that would be communicated about such as departments and coordination over the issuance of bonds. Commissioner Gusukuma asked him why Sup. Hall would not have undue influence or unfair advantage over his former colleagues. Mr. Ochoa said that the person representing TIDA to the Board would have to know the Board and that Hall's experience would be valuable and not unduly influence. Commissioner Gusukuma agreed that Sup. Hall would have an advantage in the TIDA position but asked why it would not unfair. Mr. Ochoa said that Hall's experience would improve the process with the Board and make things more efficient.

Chairperson Garcia referenced the last page of the staff memo, indicating that the interests of Hall in representing TIDA would be the same as when representing the Board: the citizens of the City & County. He said that, if you could make a case for unfair advantage or undue influence, the beneficiary would be the citizens and not Sup. Hall, who would be a salaried employee. Commissioner Lynn said that that was why the campaign contributions were relevant. Commissioner Gusukuma said that she was not particularly persuaded that TIDA and the Board represented all of the same interests, giving the example of benefiting TIDA at the expense of other departments. Chairperson Garcia said that the post-employment restriction was supposed to prevent private advantage as a lobbyist and Commissioner Gusukuma asked if this supported Commissioner Lynn's argument that the provision should not be applied here at all. Commissioner Anglade said that she was impressed that the request for waiver had been made then with an abundance of caution and thought that it would counter-intuitive to then punish the requestor. She said gave an example where, if the Commission's executive director went to another commission,

he or she might be influential but that it would not be undue if he or she served another commission. Chairperson Garcia said it would be hard to imagine any one individual being influential over the Board; Commissioner Lynn disagreed, saying there were historical examples.

Commissioner McCoy asked about the definition of "Intent to influence" in the Definitions section of the Regulations on post-employment restrictions. Mr. Jacobs explained that the definition set forth the situations where a former employee is attempting to influence a government decision, which is prohibited unless waived. Mr. Jacobs said that the factors set forth in the previous Regulation addressed by Commissioner Gusukuma addressed whether or not there was undue influence or unfair advantage. Mr. Jacobs noted that the Commission could disagree with staff's conclusion that the post-employment restriction applied to other governmental entities such as TIDA.

Mr. Jacobs suggested amending the motion to show a finding of no undue influence. Commissioner Anglade adopted the amendment. Commissioner McCoy suggested that public comment be taken on the revised motion prior to calling the question.

Charles Marstellar gave comment, saying that the purpose of the $500 contribution limit is to block undue influence, indicating that he did not think individual contributions were much of an issue. He pointed out that the Political Reform Act's Sec. 84308(c) provided for an easy remedy involving return of contributions. Mr. Marstellar said that Sup. Hall had certainly made a good faith effort, noting the press and the TIDA meeting. However, Mr. Marstellar said that the Commission can put additional qualifications on resolutions. He also said that process was rushed, creating a cloud over Hall's appointment to TIDA, and that he did not understand why they did not wait until August 9, 2004. Commissioner Anglade said that there had been due consideration.

Motion 04-8-4-3 (Anglade/Garcia): Moved, seconded, and passed (4-1) (Lynn opposing): that, because the Commission finds that granting a waiver of Sec. 3.234 (a)(1)(D) to Tony Hall for communications on behalf of the Treasure Island Development Authority would not create the potential for undue influence or unfair advantage, the Commission grants Mr. Hall's request for a waiver, contingent upon his resignation from the Board of Supervisors, provided that such waiver will expire if he has not resigned as of 5 pm on Thursday, August 5, 2004.

IV. Public Comment on matters appearing or not appearing on the agenda that are

within the jurisdictions of the Ethics Commission.

There was no further public comment.

V. Adjournment.

Motion 04-08-4 (Anglade/Gusukuma): Moved, seconded, and unanimously passed (5-0): That the Commission adjourn its meeting.

The meeting was adjourned at 9:30 p.m.

Respectfully submitted,

_____

Oliver Luby

Fines Collection Officer

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Attach Ms. Gannon's comments

[1] Sunshine Ordinance Sec. 67.6(f) provides in part: "Special meetings of any policy body ... may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice."

[2] Regulation 3.234-4 (a)(3) provides in part: "The Ethics Commission shall consider, at its next regularly scheduled meeting, any request that meets the criteria set forth in subsections ... of this Regulation, provided that such request is received at least five business days in advance of the meeting."

[3] Regulation 3.234-4(a)(1) provides in part: "The former City officer or employee must also certify that he or she has provided a copy of the waiver request to the City officer or employee responsible for the day-to-day management of his or her former department, board, commission, office, or unit of government."

[4] C&GC Code Sec. 3.234(a)(1)(D) reads: "One year restriction on communicating with former department. No former officer or employee of the City and County, for one year after termination of his or her service or employment with the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City and County) with any officer or employee of the department, board, commission, office or other unit of government, for which the officer or employee served."

C&GC Code Sec. 3.234(a)(1)(E)(i) reads: "At the request of a former City officer or employee, the Ethics Commission may waive any of the restrictions in subsections (a)(1)(A), (a)(1)(B) and (a)(1)(D) if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage. The Ethics Commission shall adopt regulations implementing this provision."

Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF CANCELLED MEETING
AUGUST 9, 2004, 5:30 P.M.
and AGENDA

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

The regular meeting for the Ethics Commission, scheduled for August 9, 2004, has been cancelled.

The Ethics Commission will hold a special meeting to make a final determination as to whether the amount in the Election Campaign Fund is sufficient to fund all candidates for the Board of Supervisors who may be eligible to receive public financing. The date of the meeting has yet to be determined but will be between August 25 and September 2, 2004, depending on the schedules of the Commissioners.

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Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
AUGUST 31, 2004, 5:30 P.M.
and AGENDA

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Room 421 City Hall*
1 Dr. Carlton B. Goodlett Place, San Francisco
*Please note room location

08-26-04 09:11 RCVD

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Determination of whether, under San Francisco Campaign and Governmental Conduct Code section 1.154, the amount of funds in the Election Campaign Fund ($670,000) is sufficient to fund all candidates for the Board of Supervisors who may be eligible to receive public funding for their election campaigns, or whether the Commission must pro-rate the available funds. A staff report on this item will be available from the Commission office and on its website on August 27, 2004. (Discussion and possible action.)**

IV. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

V. **Adjournment.**

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

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For more information on your rights under the Sunshine Ordinance (Chapter 67 of the SF Admin. Code) or to report a violation of the ordinance, contact Donna Hall, Sunshine Ordinance Task Force, City Hall, Room 409, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4683. Telephone: (415) 554-7724; Fax: (415) 554-7854; E-mail: Donna_Hall@ci.sf.ca.us. Copies of the Sunshine Ordinance can be obtained from the Sunshine Task Force, the San Francisco Public Library and on the City's web site at www.ci.sf.ca.us

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SF Ethics Commission Agenda – Tuesday, August 31, 2004

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct. Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300; fax (415) 581-2317 and web site www.sfgov.org/ethics.

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Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
TUESDAY, AUGUST 31, 2004, 5:30 P.M.
REVISED AGENDA

Room 421 City Hall*
1 Dr. Carlton B. Goodlett Place, San Francisco
*Please note room location

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I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Determination of (1) whether, under San Francisco Campaign and Governmental Conduct Code section 1.154, the amount of funds in the Election Campaign Fund ($670,000) is sufficient to fund all candidates for the Board of Supervisors who may be eligible to receive public funding for their election campaigns, or whether the Commission must pro-rate the available funds, and (2) consideration of whether the Commission should seek additional funding for the Election Campaign Fund. A staff report on this item will be available from the Commission office and on its website on August 27, 2004. (Discussion and possible action.)**

IV. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

V. **Adjournment.**

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SF Ethics Commission Agenda – Tuesday, August 31, 2004

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Ethics Commission

August 31, 2004

(Approved 9/13/04)

Minutes of the Special Meeting of the

San FranciscoEthics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 421

August 31, 2004

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I. **Call to order and roll call.**

Chairperson Michael Garcia called the meeting to order at 5:45 p.m.

COMMISSION MEMBERS PRESENT: Michael Garcia, Chairperson; Joe Lynn, Commissioner; Waukeen McCoy, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Shaista Shaikh, Public Finance Administrator; Richard Mo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Emeric Kalman; David Pilpel.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Notice of Special Meeting of August 31, 2004, and Revised Agenda

August 27, 2004 Memorandum from John St. Croix to Ethics Commission regarding Pro-Ration of Public Funds

August 31, 2004 San Francisco Ethics Commission - Disbursement of Public Funds Roster

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Emeric Kalman stated that he came to the Commission offices a week ago and that he had some questions for the Executive Director. He asked if the Commission (had jurisdiction over complaints about the Mayor's Office) was a policy or legislative body and whether the Commission had the authority to make a judgment call over the Mayor's Office. Chairperson Garcia informed Mr. Kalman that this was not the proper forum for these questions, and he advised Mr. Kalman that he could submit his (complaint) questions in writing to the Executive Director.

III. Determination of (1) whether, under San Francisco Campaign and Governmental Conduct Code section 1.154, the amount of funds in the Election Campaign Fund ($670,000) is sufficient to fund all candidates for the Board of Supervisors who may be eligible to receive public funding for their election campaigns, or whether the Commission must pro-rate the available funds, and (2) consideration of whether the Commission should seek additional funding for the Election Campaign Fund.

Executive Director John St. Croix referred the Commission to his August 27, 2004 memorandum. He noted that twenty-five (25) candidates for the Board of Supervisors timely filed a Declaration for Public Funds. Based on the maximum disbursement of $43,750 to each candidate who submitted a declaration, this would require a total disbursement of $1,093,750. There is currently $670,000 in the Election Campaign Fund. Assuming that all twenty-five candidates qualify to receive public funding, the Election Campaign Fund faces a potential shortfall of $423,750. As such, the staff recommends pro-rating the available funds and also recommends that the Commission agrees (agree) to approve pro-ration.

Mr. St. Croix noted that is possible that not all twenty-five candidates who submitted declarations will qualify for public funding. All filings are currently being reviewed by staff. To date, twelve (12) candidates have been certified. The review process is time-consuming and labor-intensive. Operating on the assumption that all 25 candidates will qualify for public funding, Mr. St. Croix restated the need to pro-rate the existing funds. He pointed out that depending on what the Commission decides,

staff might submit a supplemental appropriation request (to) from the Mayor's Office.

Commissioner Lynn asked if Mr. St. Croix felt comfortable with the current staffing level to be able to support 25 participants in the public funding program. Mr. St. Croix responded in the affirmative and noted that staff has two temporary positions which have been approved to be hired in the near future. He also emphasized that although staff will meet all deadlines, the work required to support the public funding might possibly impact other staff functions.

Commissioner McCoy expressed concern regarding how the Commission could secure a supplemental appropriation, given the City's budgetary problems. Mr. St. Croix responded that staff would pursue whatever avenue that the Commission directed it to follow. Chairperson Garcia suggested that the Commission deal with pro-ration and the supplemental appropriation request as two separate issues.

Commissioner Lynn asked if the Commission needed to delegate any authority to pro-rate to the Executive Director. Mr. St. Croix responded in the negative and explained that pro-ration, once authorized by the Commission, was an automatic process. Commissioner McCoy asked what would happen if only 18 of the 25 candidates are ultimately certified as being eligible to receive public financing funds. Mr. St. Croix responded that the Commission is not required to dictate the exact amount allocated to each candidate.

Commissioner Lynn stated that he had heard rumors from the press that the Mayor's Office has a governmental fund and that the Mayor's press secretary had stated that the shortfall would be funded. He also noted that San Francisco Campaign and Governmental Conduct Code §1.138(b) states in pertinent part: "If at any time the amount appropriated is insufficient to fund all eligible candidates, the Ethics Commission shall notify the Mayor and Board of Supervisors, and the City and County shall appropriate additional funds. The Ethics Commission shall assist the Mayor and Board of Supervisors in estimating any additional funds required."

Commissioner Lynn again asked if the Commission needed to delegate authority to the Executive Director. Commissioner McCoy stated that it appeared that the Commission had to pro-rate, and he asked if the Commission should ask for additional money. Chairperson Garcia responded in the affirmative and reiterated that the request for additional funding would be covered in the second part of the discussion.

Deputy City Attorney Claire Sylvia explained that the issues of pro-ration and request for supplemental funding involved a timing issue. First, the Commission needed to disburse funds to eligible candidates. Then, then the Commission would ask the Board of Supervisors and Mayor for supplemental funds. Mr. St. Croix stated that it was possible that the Mayor has a certain amount of discretion to shift funds.

Motion 04-8-31-1 (McCoy/Lynn): Moved, seconded, and unanimously passed (3-0): that, because the amount of funds in the Election Campaign Fund is insufficient to fully fund all the candidates for the Board of Supervisors who have applied for and may be eligible to receive public funding for their election campaigns, the Commission pro-rate the available funds.

Public Comment

David Pilpel asked if pro-ration was approved today, would such a process only pro-rate funds above and beyond the initial $5,000 grants. Mr. St. Croix responded in the affirmative and explained there is currently enough money in the Election Campaign Fund so that each candidate would receive the initial $5,000. Beyond that initial $5,000, there is currently enough funding to disburse an additional $13,958 to each of the 25 candidates.

Mr. Pilpel asked if pro-ration is authorized and additional funds become available, whether these funds would also be prorated. Mr. St. Croix responded in the affirmative. Mr. Pilpel asked if there was any language in the regulations that allows for this. Mr. St. Croix responded that if there is full funding in the Election Campaign Fund, then all eligible candidates would receive the maximum amount for which they qualify. Mr. Pilpel inquired if this was a delegable power. Ms. Sylvia responded in the affirmative.

Chairperson Garcia inquired if the Commission needed to expand the initial delegation to pro-rate funding to any additional future funds. Ms. Sylvia explained that it was not entirely a pro forma process, because of additional factors that can be taken into account. Chairperson Garcia inquired as to the nature of these additional factors. Ms. Sylvia explained that the Commission needed to be clear as to what exact authority the Commission is delegating and what it is not delegating. As an example, Ms. Sylvia presented a hypothetical situation where a candidate fails to raise enough money to qualify for public funding. She stated that the Commission has a set amount of money and that the authority delegated to the Executive Director would allow for him to re-calculate the math, based on a candidate dropping out.

Commissioner Lynn stated that there was a time limit issue and asked how staff arrived at the $14,000 per candidate amount. According to Commissioner's Lynn calculations, there is $670,000 in the fund and 25 candidates, so each candidate should receive $26,800. Shaista Shaikh, Public Finance Administrator, responded that based on the initial deadline for filing nomination papers, 48 candidates indicated

that they intended to participate in the public financing program, resulting in the amount of $13,958 per candidate. (but now the pro-ration is ddd, based on 25 candidates). Mr. St. Croix stated that the delegation issue could be discussed at the September 13, 2004 meeting. He also noted that as the November election date approaches, additional funds may become available, based on changing circumstances, such as candidates dropping out or the Mayor's Office appropriating additional funds.

Chairperson Garcia inquired if the Commission needed to define pro-ration. Ms. Sylvia responded that the Commission may not know before its September 13, 2004 meeting if any candidates will drop out of the race and thus be found ineligible to receive public financing, because people who are found ineligible have five days to respond. Mr. St. Croix stated that a delay at this point was unnecessary and that the Commission need not vote on delegation at this meeting. Ms. Sylvia explained that pro-ration meant that the Commission would reserve an equal amount of money for each of the candidates.

Motion 04-8-31-2 (McCoy/Lynn): Moved, seconded, and unanimously passed (3-0): that the Commission shall pro-rate the $670,000 in the Election Campaign Fund based on the pool of 25 candidates, and that all qualified candidates shall receive equal sums of money.

Chairperson Garcia stated that the Commission will to formally notify the Mayor, the Controller's Office and the Board of Supervisors, regarding the shortfall of funds in the Election Campaign Fund, and it was unclear whether the Mayor and/or Board of Supervisors would be willing to approve supplemental funding. He also stated that this was a glaring problem that needs to be dealt with in the future, because two of the candidates who have applied for public financing are current Supervisors, and these two candidates would be voting on whether to appropriate additional funding and that this scenario raised issues of a conflict of interest. He reported that he and Mr. St. Croix met with the Mayor's Office regarding the shortfall and were informed that the Mayor's Office would consider the request for additional funding.

Public Comment

Mr. Pilpel stated that a letter from the Commission to the Mayor's Office, the Board and the Controller's Office would be appropriate, and that if all 25 candidates qualify, the Commission would need additional funding to fully fund each candidate. Mr. Pilpel also mentioned that it would be prudent for the City to appropriate such funds from any legally available source.

Commissioner McCoy stated that he thought a letter would be fine. Mr. St. Croix stated that staff would send a letter to the Mayor's Office, requesting additional funding.

Motion 04-8-31-3 (Lynn/McCoy): Moved, seconded, and unanimously passed (3-0): that the Commission shall accept staff's recommendation regarding seeking additional funding from the Mayor's Office and notifying the Mayor's Office, the Controller's Office and the Board of Supervisors that based on the current available funds of $670,00 in the Election Campaign Fund and a pool of 25 candidates, there is a shortfall and the Commission seeks a supplemental appropriation so that each candidate can be fully funded.

IV. Public Comment on matters appearing or not appearing on the agenda that are

within the jurisdictions of the Ethics Commission.

There was no further public comment.

V. Adjournment.

Motion 04-8-31-4 (McCoy/Lynn): Moved, seconded, and unanimously passed (3-0): That the Commission adjourn its meeting.

The meeting was adjourned at 6:25 p.m.

Respectfully submitted,

_____

Richard Mo

Investigator/Legal Analyst

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Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
SEPTEMBER 13, 2004, 5:30 P.M.
and AGENDA

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Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Approval of the minutes of the regular meeting of July 12, 2004, and special meetings of August 4, 2004 and August 31, 2004. (Discussion and possible action.)**

IV. **Executive Director's report**

V. **Consideration of whether, under S.F. Campaign and Governmental Conduct Code section 3.234(a)(1)(E), the Commission should grant a waiver to former Deputy City Attorney Ruth Edelstein from the one-year post-employment restriction imposed under section 3.234(a)(1)(D). A staff report on this item will be available from the Commission office and on its website on September 9, 2004. (Discussion and possible action.)**

VI. **Consideration of resolution to delegate authority to the Executive Director to make decisions related to the pro-ration of public funds under Ethics Commission regulation 1.144-3(c)(2). The proposed resolution is as follows:**

"The Executive Director shall monitor the Election Campaign Fund for changes in the status of the participants (ie: number of candidates, number of candidates that withdraw, number of candidates, if any, that become ineligible by, for example, exceeding the spending limits, etc.) and changes in the funding level of the Election Campaign Fund (ie: potential increases from reallocation of other funds, increases in available funds due to decrease in number of active candidates, etc.) and at his discretion, adjust or readjust the pro-rated allocations based upon new information or the availability of new funding." (Discussion and possible action.)

VII. **Commissioner questions and proposed future agenda items.**

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion and possible action.)

VIII. Possible closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff
Number of possible cases: 2

IX. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation as plaintiff.

X. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting. (Discussion and possible action.)

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

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Ethics Commission

September 13, 2004

(Approved 10/18/2004)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

September 13, 2004

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I. Call to order and roll call.

Chairperson Michael Garcia called the meeting to order at 5:40 p.m. He introduced John St. Croix as the new Executive Director of the Ethics Commission. He also thanked Deputy Executive Director Mabel Ng for her dedicated service and leadership of the Commission and staff during difficult and trying circumstances.

Chairperson Garcia noted that the order of the agenda would be shifted as follows: Item V would be discussed immediately following Item II; then item VIII; then item III and the remaining items in sequential order. (These minutes reflect the order in which the Commission took up the items on the agenda.)

COMMISSION MEMBERS PRESENT: Michael Garcia, Chairperson; Michele Anglade, Vice-Chairperson; Joe Lynn, Commissioner; Waukeen McCoy, Commissioner; Emi Gusukuma, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Investigator/Legal Analyst

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: David Pilpel; David Glickman (Treasurer, Matt Tuchow Supervisorial Campaign)

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Executive Director's Report for the Meeting of September 13, 2004

September 13, 2004 Attachment 3 to Executive Director's Report

Memo regarding Agenda Item V: Request of Waiver from San Francisco Campaign and Governmental Conduct Code Section 3.234(a)(1)(D)

Draft Minutes of the Special Meeting of August 31, 2004

Draft Minutes of the Special Meeting of August 4, 2004

August 5, 2004 Memo from Margaret Gannon to Ethics Commission

Draft Minutes of the Regular Meeting of July 12, 2004

Approved Minutes of the Special Meeting of June 28, 2004

Approved Minutes of the Regular Meeting of June 14, 2004

September 9, 2004 San Francisco Ethics Commission - Disbursement of Public Funds Roster

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

David Pilpel inquired as to the length of the closed session. Chairperson Garcia responded that there were two separate closed sessions and that it was likely that the sessions would last at least one hour. Mr. Pilpel inquired about the status of the Oliver Luby and Kevin DeLiban complaint and requested that the Commission give an update, if and when one was available. He then asked about the timeline regarding the Statements of Incompatible Activities. Mr. Pilpel requested a copy of the letter from the Commission to the Board of Supervisors and Mayor, regarding the insufficiency of funds for the public financing program.

David Glickman, treasurer for Matt Tuchow, District One Supervisorial Candidate, expressed concern regarding the public financing program. He noted that the amount of money being held for each candidate assumes that all the candidates who applied for matching funds will be able to raise the maximum amount of matching funds, and this places restrictions on candidates. Chairperson Garcia responded that when Item

VI is discussed, he would mention that the Commission has requested a supplemental appropriation from the Board of Supervisors.

V. Consideration of whether, under San Francisco Campaign and Governmental Conduct Code section 3.234(a)(1)(E), the Commission should grant a waiver to former Deputy City Attorney Ruth Edelstein from the one-year post-employment restriction imposed under section 3.234(a)(1)(D).

Deputy Executive Director Mabel Ng stated that as noted in the staff memo, staff recommended that the Commission grant the waiver, as staff believed that there was no potential for undue influence and/or unfair advantage, as set forth in the staff memo. She noted that the City Attorney did not object to this waiver request.

Ms. Edelstein stated that the reasons for her waiver request were set forth in her August 30, 2004 letter to the Commission. Commissioner Anglade noted that Ms. Edelstein's letter was well-written. Commissioner Lynn stated that it would be helpful for future requests if the department head would sign off on the waiver. Deputy City Attorney Claire Sylvia noted the Commission's regulations did not require such action, but the department head could choose either to attend or not attend the hearing. Chairperson Garcia added that he agreed with Commissioner Lynn's suggestion.

Public Comment:

Mr. Pilpel stated that he supported the waiver request and that the Commission granted such a waiver request for former District Attorney Terrance Hallinan.

Motion 04-9-13-1 (Lynn/Anglade): Moved, seconded, and unanimously passed (5-0): that, because the Commission finds that granting a waiver of Section 3.234(a)(1)(D) to Ms. Edelstein would not create the potential for undue influence or unfair advantage, the Commission grants Ms. Edelstein's request for a waiver as outlined in staff's recommendation.

III. Approval of the minutes of the regular meeting of July 12, 2004 and special meetings of August 4, 2004 and August 31, 2004.

Minutes for the special meeting of August 31, 2004:

Chairperson Garcia noted the following change: In the last line of paragraph three on page three, change "Ms. Claire" to "Ms. Sylvia."

Motion 04-9-13-2 (Lynn/Garcia): Moved, seconded, and unanimously passed (5-0): that the Commission adopt the minutes of the special meeting of August 31, 2004, with the suggested change.

After that vote, Commissioner Gusukuma and Commissioner Anglade asked if they could abstain from voting, because they were absent from the August 31,

2004meeting. Ms. Sylvia explained that the Commissioners were required to vote. The Commission could, however, vote to excuse a Commissioner from participating in a motion.

Motion 04-9-13-3 (Lynn/McCoy): Moved, seconded, and unanimously passed (5-0): that the Commission excuse Commissioners Anglade and Gusukuma from voting on whether to adopt the minutes of the special meeting of August 31, 2004.

Motion 04-9-13-4 (Lynn/McCoy): Moved, seconded, and passed (3-0, Commissioners Anglade and Gusukuma abstaining): that the Commission adopt the minutes of the special meeting of August 31, 2004, with the suggested change.

Minutes for the special meeting of August 4, 2004:

Commissioner Anglade noted the following changes: In the second line of the fourth paragraph on page eight, replace the existing sentence with "She said that a carte blanche waiver would involve a lot and that a situation could arise in the future which would require a use of his influence."

Commissioner Gusukuma expressed reservations about accepting Margaret Gannon's e-mail attachment to the minutes. She stated that it would be appropriate to make something part of the record, so long as it was submitted at the meeting.

Public Comment:

Mr. Pilpel noted that minutes indicated that the author of the e-mail attachment, Ms. Gannon, spoke at the August 4, 2004meeting. He noted that Section 67.15 of the Sunshine Ordinance allows any member of the public who speaks at a meeting to submit a statement not to exceed 150 words, and such statement shall be included as part of the minutes.

Motion 04-9-13-5 (Anglade/Lynn): Moved, seconded, and passed (4-1, Gusukuma dissenting): that the Commission accept Mr. Gannon's email attachment to the minutes of the special meeting of August 4, 2004.

Motion 04-9-13-6 (Anglade/Lynn): Moved, seconded, and unanimously passed (5-0): that the Commission adopt the minutes of the special meeting of August 4, 2004, with the suggested change.

Minutes for the regular meeting of July 12, 2004:

Public Comment:

Mr. Pilpel requested the following change on the first line of the fourth paragraph on page three: Replace "on the Commision's behalf" with "in support of the Commission's budget."

Motion 04-9-13-7 (McCoy/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the Commission adopt the minutes of the regular meeting of July 12, 2004, with the suggested change.

VIII.A. Closed session held pursuant to Charter Section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

There was no public comment.

Motion 04-9-13-8 (Gusukuma/Lynn): Moved, seconded, and unanimously passed (5-0): that the Commission go into closed session.

At 6:10 p.m., the Commission went into a closed session. The following individuals remained in the room: Chairperson Garcia; Vice-Chairperson Anglade; Commissioner Gusukuma; Commissioner McCoy; Deputy City Attorney Paul Zarefsky; and Dan Purnell, Executive Director of the Oakland Public Ethics Commission. The following individuals left the room: Executive Director John St. Croix; Deputy Executive Director Mabel Ng; Legal Analyst Richard Mo; Deputy City Attorney Claire Sylvia; and Commissioner Joe Lynn.

At 9:35 p.m., the Commission reconvened in open session.

Chairperson Garcia announced that the Commission had conducted deliberations in closed session regarding the complaint that had been filed with the Sunshine Ordinance Task Force against Ginny Vida and Mabel Ng, alleging a violation of the Sunshine Ordinance. The complaint had been referred to the Oakland Public Ethics Commission, whose Executive Director, Dan Purnell, produced an investigation which determined that the matter should be dismissed. The Commission, by a 3-1 vote, with Commissioner McCoy dissenting, supported this determination. Commissioner Lynn was recused.

Chairperson Garcia stated that the Commission had dismissed the complaint and directed Executive Director John St. Croix to inform all concerned parties, including the Sunshine Ordinance Task Force, Respondents Vida and Ng, and Complainants Luby and DeLiban, of the Commission's dismissal of the complaint.

IX. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion 04-9-13-9 (McCoy/Gusukuma): Moved, seconded, and unanimously passed (4-0): that the Commission not disclose any action taken or discussions held in closed session.

There was no public comment.

VIII.B. Closed session held pursuant to Charter Section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

At 9:40 p.m., the Commission resumed its closed session.

IX. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

At 10:45 p.m., the Commission concluded its closed session and returned to open session.

Motion 04-9-13-10 (Lynn/Anglade): Moved, seconded, and unanimously passed (5-0): that the Commission not disclose any action taken or discussions held in closed session.

IV. Executive Director's Report

Executive Director St. Croix referred the Commission to his report. Commissioner Lynn inquired about the issue of identifying non-filers on the Commission's

website.

- **Consideration of resolution to delegate authority to the Executive Director to make decisions related to the pro-ration of public funds under Ethics Commission regulations 13114-3(c)(2).**

Motion 04-9-13-11 (Lynn/Anglade): Moved, seconded, and unanimously passed (5-0): that the Executive Director shall monitor the Election Campaign Fund for changes in the status of the participants and changes in the funding level of the Election Campaign Fund and at his discretion, adjust or readjust the pro-rated allocations based upon new information or the availability of new funding.

VII. Commissioner questions and proposed future agenda items: a) Inquiries to Executive Director; b) Items for Future Meetings.

Commissioner Gusukuma stated that the issue of attaching speaker comments to the minutes should be discussed further at the next meeting. Specifically, she referenced Attachment III to the Executive Director's Report.

Commissioner Lynn requested that the Commission calendar consideration of the odd-even year reporting problem. Chairperson Garcia requested that Commissioner Lynn submit a report to the Executive Director.

Commissioner Lynn stated that the Commission needed political support in order to ensure that the Commission staff is adequately staffed to carry out its mandated duties. He mentioned that budget season was rapidly approaching and that the Commission must begin preparing for the next fiscal year's budget.

Chairperson Garcia mentioned he would like to proceed with a request that the U.C. Berkeley Goldman School of Public Policy prepare a white paper on Proposition O and might require information from the Commission. None of the Commissioners had any objection.

X. Summary of Commission Action

Chairperson stated that the Commission had taken the following action: a) granted a waiver of San Francisco Campaign and Governmental Conduct Code Section 3.234(a)(1)(D) to former Deputy City Attorney Ruth Edelstein to communicate with her former department on dependency cases; b) delegated authority to the Executive Director to make decisions related to the pro-ration of public funds under Ethics Commission regulations 13114-3(c)(2); and c) adopted a recommendation by the Executive

Director of the Oakland Public Ethics Commission to dismiss a complaint forwarded by the Sunshine Ordinance Task Force that Ginny Vida and Mabel Ng violated sections 67.29-1 and 67.29-7(a) of the Sunshine Ordinance.

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

XII. Adjournment.

Motion 04-9-13-12 (Gusukuma/Lynn): Moved, seconded, and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 11:00 p.m.

Respectfully submitted,

_____

Richard Mo

Investigator/Legal Analyst

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OCT-14-2004 13:10 SF ETHICS COMMISSION

Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
OCTOBER 18, 2004, 5:30 P.M.
and AGENDA

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Approval of the minutes of the regular meeting of September 13, 2004. (Discussion and possible action.)**

IV. **Executive Director's report**

V. **Consideration of proposed written advice regarding the application of Campaign and Governmental Conduct Code section 1.122 to candidates who are seeking election to the Board of Supervisors on the November 2004 ballot: whether it is permissible, given the introduction of Ranked Choice Voting, for a candidate to use campaign funds to send a mailing containing endorsements of other candidates for second- and third-tier voter choices. (Discussion and possible action.)**

VI. **Commissioner questions and proposed future agenda items.**

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion and possible action.)

VII. **Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.**

Conference with Legal Counsel: Anticipated litigation as plaintiff
Number of possible cases: 19

VIII. **Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.**

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation as plaintiff.

IX. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting. (Discussion and possible action.)

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XI. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the SF Admin. Code) or to report a violation of the ordinance, contact Donna Hall, Sunshine Ordinance Task Force, City Hall, Room 409, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4683. Telephone: (415) 554-7724; Fax: (415) 554-7854; E-mail: Donna_Hall@ci.sf.ca.us. Copies of the Sunshine Ordinance can be obtained from the Sunshine Task Force, the San Francisco Public Library and on the City's web site at www.ci.sf.ca.us

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CITY AND COUNTY OF SAN FRANCISCO

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Agenda

Notice of Special Hearing

MICHAEL L. GARCIA
CHAIRPERSON

MICHELE ANGLADE
VICE-CHAIRPERSON

EMI GUSUKUMA
COMMISSIONER

JOE LYNN
COMMISSIONER

WAUKEEN Q. MCCOY
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Pursuant to Ethics Regulation 3.234-4(c), the Executive Director of the Ethics Commission will consider a request from former Deputy City Attorney David F. Campos for a waiver from San Francisco Campaign and Governmental Conduct Code Section 3.234(a)(1)(D), the one-year restriction on an employee communicating with his/her former department.

The meeting will be held at the Ethics Commission office:

30 Van Ness Avenue, Suite 3900, San Francisco
at 2 p.m. on Monday, November 1, 2004.

Mr. Campos, who was most recently a San Francisco Deputy City Attorney, spent the last two years on the City Attorney's "Energy Team." Previous to that, he worked on the "Education Team" representing the school district. He has been offered the position of General Counsel to the San Francisco United School District.

As General Counsel, he would oversee all legal matters for the SFUSD, including matters handled by outside legal counsel. The City Attorney is among the outside legal counsel agencies representing the SFUSD, therefore the position of General Counsel would necessitate Mr. Campos' communicating with his former agency. Under the law, the Commission may grant Mr. Campos a waiver from the one-year post employment ban if it determines that granting a waiver would not create the potential for undue influence or unfair advantage.

Under regulation 3.234-4(c) the Executive Director may consider and grant or deny a waiver request when the request states at the top that "A Decision Before the Next Regularly Scheduled Commission Meeting is Necessary." The Executive Director shall not approve or deny a waiver request without first convening a public meeting to discuss the request with interested parties. The Executive Director must provide at least 72 hours notice of such meetings and conduct such meetings in accordance with the principles of the Sunshine Ordinance and Brown Act. The Executive Director shall report to the Commission his or her determination regarding whether the request should be granted within 24 hours of making his or her decision. The Commission may overturn the Executive Director's decision at either of its next two regularly schedule meetings, provided that two or more commissioners request that the Executive Director's decision be calendared for consideration and such requests are received by the Executive Director at least five business days in advance of the meeting. The Executive Director's decision shall be final and effective immediately unless and until overturned by the Commission.

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30 Van Ness Avenue, Suite 3900 • San Francisco, CA 94102-6027• Phone (415) 581-2300 • Fax (415) 581-2317
E-Mail Address: ethics.commission@sfgov.org Web site: sfgov.org/ethics

Ethics Commission

October 18, 2004

(Approved 11/8/04)

Minutes of the Special Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

October 18, 2004

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I. Call to order and roll call.

Chairperson Michael Garcia called the meeting to order at 5:38 p.m.

COMMISSION MEMBERS PRESENT: Michael Garcia, Chairperson; Joe Lynn, Commissioner; Emi Gusukuma, Commissioner. Vice-Chairperson Michele Anglade and Commissioner Waukeen McCoy were excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: David Pilpel; Charles Marsteller; Susan King, District 5 Supervisorial candidate; Chuck Thomas; Steven Hill, Center for Voting and Democrarcy; other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Executive Director's Report for the Meeting of October 18, 2004

October 12, 2004 Attachment 1 to Executive Director's Report

Draft Minutes of the Regular Meeting of September 13, 2004

October 5, 2004 Letter from Greg Dewar to Deputy Director Mabel Ng

Draft October 14, 2004 Letter from Deputy Director Mabel Ng to Greg Dewar

San Francisco Campaign and Governmental Conduct Code Section 1.122 and California Government Code Sections 85501 and 89510

Materials distributed at the meeting:

October 18, 2004 Letter from Executive Director John St. Croix to Fair Political Practices Commission Chair Liane Randolph

October 8, 2004 Memo from Chairperson Michael Garcia to Commission Members and Staff re: Rules of Debate

Tentative Program Schedule for December 5-8 COGEL Conference

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

David Pilpel stated that staff had been doing a good job, in light of the understaffing and the public finance program.

III. Approval of the minutes of the regular meeting of September 13, 2004.

Commissioner Lynn requested that Section VIII.A note the name of the Deputy City Attorney, Paul Zarefsky, who replaced Deputy City Attorney Claire Sylvia during the closed session. He also noted that for Motion 04-9-13-9, the motion was passed 4-0, not 5-0, as he was recused from the closed session. Lastly, Commissioner Lynn requested that Section VII reflect his request that the Commission calendar for discussion the issue of the odd/even year reporting issue and that the Chairperson had requested that Commissioner Lynn submit a report to the Executive Director.

Commissioner Gusukuma requested that Section VII reflect her request that the Commission calendar for discussion Attachment III to the Executive Director's Report for the September 13, 2004 meeting.

Public Comment:

Mr. Pilpel noted that under the Sunshine Ordinance, the minutes of a closed session must indicate the full name and title of each person present during the closed session.

Motion 04-10-18-1 (Lynn/Gusukuma): Moved, seconded, and unanimously passed (3-0): that the Commission approve the minutes of the regular meeting September 13, 2004, with the suggested changes.

IV. Executive Director's Report

Executive Director John St. Croix noted that for the budget update, the revenues received as of this month are not on par with projections for several reasons: the campaign consultant and lobbyist fees do not come in until later in the fiscal year; and staff anticipates that current investigations will result in fines which will be collected later in the current fiscal year.

With regards to the public financing program, Mr. St. Croix stated that $558,598 has been disbursed as of October 18, 2004. He noted that at the moment, there were no pending applications for additional funding; however, he anticipated that some were forthcoming. Commissioner Lynn inquired as to the cutoff date for applying for additional funds. Deputy Director Mabel Ng responded that the cutoff date was 30 days after the election.

Executive Director St. Croix stated that there were five pending advice and opinion letters, one of which would be discussed at tonight's meeting. He noted that Attachment 1 listed the accounts that have been referred to the BDR as well as a list of the audits that are currently in progress. He also mentioned that Attachment 3 was the same Attachment 3 as the September 13, 2004 meeting. Table 1 lists forfeiture analyses that have been substantially completed for defective contributor information. Table 2 lists forfeiture analyses that have not yet been completed.

Executive Director St. Croix noted that he was working with staff to identify backlogs, in an effort to clear the backlogs as expeditiously as possible, given staffing constraints. He also mentioned that staff has funding for two temporary employees and that he recently filled one of these positions. Staff will wait until the end of January to fill the other position, when staff begins auditing all campaigns that participated in the public financing program.

Commissioner Gusukuma inquired about the statute of limitations for delinquent filers. Mr. St. Croix responded that the statute of limitations was four years. Chairperson Garcia asked if there existed any mechanism for extending prescription. Mr. St. Croix responded that a couple of instances allowed for extending prescription: 1) a payment plan; and 2) if partial payment was received and the balance was pending.

Commissioner Lynn congratulated Mr. St. Croix for his efforts in resolving the potential public financing program shortage. He asked if candidates without committees received written notices. Mr. St. Croix responded in the affirmative. Commissioner Lynn asked if staff had a plan for selecting committees for random audits. He suggested that staff redesignate its resources so that it could perform these audits most efficiently. Mr. St. Croix responded that he had discussed the matter with Mayoral staff and requested that staff receive additional funds.

Commissioner Lynn stated that he had received a letter from Local 21 regarding the Statements of Incompatible Activities ("SIA") and asked if there had been any further discussion between staff and the union. Mr. St. Croix stated that he and Deputy Director Ng had met with the union and obtained their feedback and input.

Commissioner Gusukuma stated her understanding that a term of employment covered under a collective bargaining agreement trumps an SIA. Deputy Director Ng

noted that SIAs address outside incompatible activities, where as MOUs address working conditions. Commissioner Gusukuma asked if SIAs also included the grounds that an employer can use for discipline. Ms. Ng responded that if an employee engages in an activity prohibited by an SIA, the employee may be subject to discipline and that that may trigger the MOU grievance process. The intent of the SIAs is not to regulate internal working relationships or an employee's job performance. Rather, the SIAs are meant to address outside incompatible activities.

Public Comment:

Mr. Pilpel stated that given the current rate of expenditure of the public financing program, he believed that the Commission would ultimately disburse close to the original $670,000 figure. He felt that staff would not begin any new audits in the near future, because the auditing staff was currently engaged in work related to the public finance program. He noted that he would like the Executive Director's Report to include a list of individuals who failed to file Statements of Economic Interests that were due this past April. He asked if he could obtain a copy of the SIAs, by department/commission. Commissioner Lynn asked that staff provide the same list to the Commissioners. Mr. Pilpel requested that the aforementioned letter from Local 21 regarding the SIAs be placed in the public 30-day file. Lastly, he expressed his approval for staff's posting of non-responsive filers on the web.

Charles Marsteller thanked the the Executive Director, Mayor Newsom and Supervisor Daly for negotiating and fully funding the public financing program. He noted that the budget season was approaching and suggested that the Commissioners review past general guidelines and strategic plans for preparing upcoming budgets. He also suggested that the Commission inventory a list of tasks that staff has been unable to accomplish due to staffing shortages, and that this list could be used to help the Commission prepare the budget for the next fiscal year. Lastly, he noted that the topic of tonight's advice letter was the toughest issue he had ever seen presented to the Commission. He recommended that the Commission should proceed cautiously on this issue.

1. Consideration of proposed written advice regarding the application of Campaign and Governmental Conduct Code section 1.122 to candidates who are seeking election to the Board of Supervisors on the November 2004 ballot: whether it is permissible, given the introduction of Ranked Choice Voting, for a candidate to use campaign funds to send a mailing containing endorsements of other candidates for second- and third-tier voter choices.

Deputy Director Ng noted that under local law, San Francisco Campaign and Governmental Conduct Code Section 1.122, campaign funds may be used only on behalf of the candidate for whom the funds were raised. The Commission has recently received inquiries from campaigns regarding the legality of endorsing other candidates in political advertisements. An illustrative example would be where Candidate A pays for an advertisement which promotes Candidate A for the voter's first choice, Candidate X for the voter's second choice, and Candidate Y for the voter's third choice. Staff analyzed Section 1.122 and concluded that the law allows a candidate for City elective office to expend campaign funds if the primary purpose of such expenditure is to support the candidate's own candidacy.

Staff's October 14, 2004 draft advice letter states the following: "Read in isolation, the plain language of Section 1.122 would prohibit a candidate from spending any

campaign funds if the spending of such funds would benefit another candidate or ballot measure, regardless of how minimal such a benefit would be to the other candidate or ballot measure or how beneficial the expenditure would be to the candidate making the expenditure." Ms. Ng noted that the Commission previously stated that the purpose of Section 1.122 was to ensure that campaign funds were spent only for the candidate to which the donors provided the funds, under the theory that the campaign funds that are raised are held in trust, for the purposes of electing the candidate and for providing support for the candidate while he/she is in office.

When the Commission last addressed Section 1.122 in the Bagatelos advice letter, it concluded that a contributor who supported a candidate's election would not likely be surprised or troubled that the contributions would continue to support the candidate to whom they were donated. Likewise, a contributor to a candidate would not likely be surprised or troubled if a candidate made an expenditure that partially benefited another candidate, so long as the primary purpose of the expenditure was to support the candidate making the expenditure. Accordingly, staff's draft advice letter concluded that Section 1.122 permits a candidate to make those expenditures so long as the primary purpose of the expenditure is to advance that candidate's candidacy.

The draft advice letter also noted that there is a state law which may apply, Government Code Section 85501, which states that funds from a candidate's controlled committee can not be used as independent expenditures to support another candidate or a ballot measure. Staff has requested that the Fair Political Practices Committee ("FPPC") issue a written advice letter regarding this question.

Chairperson Garcia inquired if the Commission was dependent upon the FPPC's forthcoming advice letter, before the Commission could make a decision. Ms. Ng responded staff's advice letter deals with local law. However, even if the Commission decided that Section 1.122 allowed candidates to make expenditures which benefited another candidate, such expenditures may ultimately be forbidden by State law.

Commissioner Lynn stated that the Commission had independent authority to opine on Government Code Section 85501, because the Commission had incorporated that law into local law and as a chartered city it has independent campaign finance officer duties with respect to interpreting state laws. Deputy City Attorney Claire Sylvia clarified that while state law was incorporated into local law, if the Commission decided that the State law, as incorporated into local law, had one meaning and the state decided it had another meaning, this would create a problem for candidates.

Public Comment:

Susan King stated that her campaign manager, Greg Dewar, requested the advice

letter regarding Section 1.122. Ms. King stated that the purpose of her mailing was to further her own candidacy for the Board of Supervisors. Under the newly-enacted ranked-choice voting ("RCV") system, many of the campaigns have formed alliances and are working in tandem to help support each other's campaign, in order to procure a number two vote from another candidate's supporters. Ms. King stated that she had a slate of candidates whom she is supporting, as a way of furthering her own candidacy. She is asking all of her voters to rank her first, and she is also supporting fellow candidates Ross Mirkarimi and Lisa Feldstein, so that prospective voters can learn about her values and make an informed judgment.

Chuck Thomas, a volunteer strategist for several elective office candidates, stated that he asked Deputy Director Ng to prioritize his letter of October 4, 2004, and he noted that Ms. Ng had incorporated answers to his letter into her draft advice letter to Mr. Dewar. Mr. Thomas stated that in his joint mailer, his candidate is specifically number one, while the other candidates are ranked two and three. The purpose of the mailer is to ask recipients not to vote for the number two and three candidates as their number one candidate. Mr. Thomas stated that this was a strategy designed to help a candidate win an election, and he did not view Section 1.122 as being applicable to such strategies. He stated that in one district, the incumbent produced mailers in which he was pictured with John Kerry, Barbara Boxer and Nancy Pelosi, and that while this was a common practice, it would not be allowed under Section 1.122 and no one has ever been prosecuted for such a mailer. He explained that in his candidate's mailer, his candidate is clearly identified as the number one candidate, with his name in red and easily visible, and the other two candidates names in black and more difficult to read. He noted that this strategy also provided candidates with a cost-savings measure. He also mentioned that the legislators who drafted Section 1.122 never anticipated that the RCV system would implicate this law. Mr. Thomas mentioned that sharing the cost of the mailer among the candidates was another issue that needed to be addressed.

Deputy Director Ng stated that although Section 1.122 does not seem to prohibit sharing payments for joint mailers, the question becomes how to allocate payments for the mailers. Ms. Ng noted that this was one of the questions which staff presented to the FPPC.

Commissioner Lynn asked whether a candidate's independent expenditure on behalf of another candidate would qualify as a contribution, thereby triggering the contribution limit of $500. Ms. Ng responded that regardless of the characterization of the expenditure, Section 1.122 prohibits candidates from spending money to support other candidates and that includes making political contributions to other candidates. She stated that the issue is if candidate committees separately decide to coordinate efforts and make expenditures to pay their fair share for the advertisement, how is the fair-share allocation to be determined.

Commissioner Gusukuma asked Ms. King if her campaign would bear the sole responsibility for paying for the mailing. Ms. King responded in the affirmative.

Mr. Pilpel noted that were two issues which needed to be addressed. First, the

specific language used by a candidate impacts the primary purpose of his/her expenditure. Second, with regards to the allocation issue, there are two methods, either an equal basis method or a time and space allocation method. Under either method, the candidate's primary purpose would be to advance his/her own candidacy.

Steven Hill recommended that the Commission should approach this issue slowly and carefully, because it raises many issues. He noted that the ability of candidates to build coalitions was an important consideration, and that change could undermine the benefits of RCV. There are independent studies being conducted regarding this issue. San Francisco needs one standard for all of its elections.

Chairperson Garcia opined that if a candidate on a slate mailer was listed as the third choice and that candidate paid one-third of the cost for the mailing, that candidate would apparently not be primarily advancing his/her own candidacy because they were not the number one choice. Mr. Hill responded that this was a strategy whereby if the number one and two candidates lose, then the number three candidate would move up to number one.

Commissioner Lynn stated that this is one law that the Commission had not enforced, due to a lack of staff resources. He stated that the law was important, because it prevented a stalking-horse candidate from arising. The advice letter affords the public a certain amount of protection. He stated that the Commission needs to revisit this area for future elections.

Commissioner Gusukuma stated that the language of Section 1.122 is very clear, and that the Commission should not have to resort to legislative purpose or interpretation. She did not believe the Commission could use the "primary purpose" test to interpret the statute. She opined that while it would be legal for two candidates to split the cost of a joint mailer equally, it would not be legal for one candidate to pay for a mailer that endorsed two additional candidates, for the second and third choices.

Chairperson Garcia responded that he agreed with staff's advice letter and stated that to rule against it would effectively bar a candidate from engaging in a legal and strategic action to advance his or her own candidacy.

Commissioner Gusukuma stated that the "primary purpose" test was not mentioned in the statute and therefore should not be considered. She also stated that allowing candidates to promote other candidates violates the trust inherent in a contributor's donation. Executive Director St. Croix noted that the advice letter was narrowly crafted and designed to allow only a very specific type of situation. Commissioner Gusukuma noted the regulation should be revisited and that she had not changed her mind.

Motion 04-10-18-2 (Lynn/Garcia): Moved, seconded, and not passed by a majority (2-1: Gusukuma dissenting): that the Commission approve staff's October 14, 2004draft advice letter.

Chairperson Garcia inquired as to the practical effect of the Commission's vote. Ms. Ng stated that because there were only three Commissioners present, a three to zero vote was required in order for the Commission to pass a motion. Chairperson Garcia clarified his question and inquired how the Commission's decision would affect the candidates. Ms. Ng responded that staff needed specific facts from a candidate, before it could make a determination. Director St. Croix explained that while candidates were not in fact proscribed from producing joint mailers, they would be vulnerable to a complaint.

Mr. Pilpel requested a copy of the Bagatelos letter and that in the future staff make referenced advice letters available to the public.

VI. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

There were no inquiries.

Public Comment:

There was no public comment.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

There were no proposed items for future agendas.

Public Comment:

Mr. Pilpel suggested that staff conduct a workshop regarding the RCV issue, as it presented many issues and unanswered questions.

VII. Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 19

Motion 04-10-18-3 (Lynn/Gusukuma): **Moved, seconded, and unanimously passed (3-0): that the Commission go into closed session.**

At 7:15 p.m., the Commission went into a closed session. The following individuals remained in the room: Chairperson Garcia; Commissioner Gusukuma; Commissioner Lynn; Deputy City Attorney Claire Sylvia; Executive Director John St. Croix; Deputy Executive Director Mabel Ng; and Legal Analyst Richard Mo.

At 8:50 p.m., the Commission reconvened in open session.

VIII. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session, except its decision on Complaint No. 49-021130.

Motion 04-10-18-4 (Lynn/Gusukuma): **Moved, seconded, and unanimously passed (3-0): that the Commission not disclose any discussions held in closed session.**

The Chairperson announced that Commission voted 3-0 to enter into a stipulated decision and order with San Franciscans Against the Blank Check - No on D Committee and its treasurer, James R. Sutton, ("Respondents") to settle Complaint No. 49-021130 for $100,000. The case involves the Committee's and Sutton's failure to timely file two late contribution reports during the 2002 general election. Sutton and Nielsen, Merksamer, Parrinello, Mueller & Naylor LLP, Sutton's former law firm, have taken full

responsibility for failing to file such reports and therefore will pay the fine. Commission staff had worked jointly with the Fair Political Practices Commission ("FPPC") to investigate this complaint. The agreement is contingent upon the Sacramento Superior Court's entry of final judgment for civil penalties against Respondents and PG&E in favor of the FPPC in the case of the Fair Political Practices Commission v. San Franciscans Against the Blank Check - No on D Committee, et al.

There was no public comment.

IX. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting.

The Chairperson stated that the Commission had taken the following action: a) The Commission voted to approve settlement in Complaint No. 49-021130 in the amount of one hundred thousand dollars ($100,000); and b) The Commission voted 2-1 (Gusukuma dissenting) to approve staff's draft October 14, 2004 advice letter regarding Section 1.122 of the San Francisco Campaign and Governmental Conduct Code. Because only three members of the Commission attended the meeting, unanimity was necessary to approve the proposed advice letter.

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

XI. Adjournment.

Motion 04-10-18-5 (Lynn/Gusukuma): Moved, seconded, and unanimously passed (3-0): that the Commission adjourn.

The meeting was adjourned at 9:00 p.m.

Respectfully submitted,

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Richard Mo

Investigator/Legal Analyst

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Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
NOVEMBER 8, 2004, 5:30 P.M.
and AGENDA

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Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Approval of the minutes of the special meeting of October 18, 2004. (Discussion and possible action.)**

IV. **Executive Director's report**

V. **Identification of possible amendments to the Campaign Finance Reform Ordinance, including the public financing program, which might be necessary in light of issues that arose during the November 2004 election, and the establishment of a timetable for the consideration of such possible amendments. (Discussion and possible action.)**

VI. **Establishment of a procedure and timetable for the Ethics Commission to consider the Statements of Incompatible Activities that have been submitted by the City's departments, boards and commissions. A staff report will be available at the Commission's office and on the Commission's website on Thursday, November 4, 2004. (Discussion and possible action.)**

VII. **Consideration of whether under San Francisco Campaign and Governmental Conduct Code section 2.234(a)(1)(E), the Commission should grant a waiver to former Deputy City Attorney David Campos from the one-year post-employment restriction under S.F. Campaign and Governmental Conduct Code section 3.234(a)(1)(D). A staff report will be available at the Commission's office and on the Commission's website on Thursday, November 4, 2004. (Discussion and possible action.)**

VIII. **Review and approval of draft annual report for FY 2003-2004. The draft annual report will be available at the Commission office and on the Commission's website on Thursday, November 4, 2004. (Discussion and possible action.)**

IX. **Commissioner questions and proposed future agenda items.**

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion and possible action.)

X. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting. (Discussion and possible action.)

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the SF Admin. Code) or to report a violation of the ordinance, contact Donna Hall, Sunshine Ordinance Task Force, City Hall, Room 409, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4683. Telephone: (415) 554-7724; Fax: (415) 554-7854; E-mail: Donna_Hall@ci.sf.ca.us. Copies of the Sunshine Ordinance can be obtained from the Sunshine Task Force, the San Francisco Public Library and on the City's web site at www.ci.sf.ca.us

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Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct. Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300; fax (415) 581-2317 and web site www.sfgov.org/ethics

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Ethics Commission

November 8, 2004

(Approved as amended 12/13/04)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

November 8, 2004

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I. Call to order and roll call.

Chairperson Michael Garcia called the meeting to order at 5:35 p.m.

COMMISSION MEMBERS PRESENT: Michael Garcia, Chairperson; Michele Anglade, Vice-Chairperson (arrived at 5:38 p.m.); Joe Lynn, Commissioner; Emi Gusukuma, Commissioner; and Waukeen McCoy, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; SarahLeah Dang, Campaign Finance/Budget Officer.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: David Pilpel; Charles Marsteller; Anita Mayo; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Executive Director's Report for the Meeting of November 8, 2004

Request of David Campos for Waiver from S.F. C&GC Code § 3.234(a)(1)(D)

Draft Minutes of the Special Meeting of October 18, 2004

Draft Proposed Process for Consideration of Statements of Incompatible Activities, Attachment 3

SF Ethics Commission Disbursement of Public Funds

Notice of Interested Persons Meeting on Friday, November 19, 2004

SF Ethics Commission draft Annual Report July 1, 2003-June 30, 2004

Materials distributed at the meeting:

Statements of Economic Interests, List of Non-Filers-2004

List of Departments, Boards and Commissions Filing Statements of Incompatible Activities

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

No comment was received.

III. Approval of the minutes of the special meeting of October 18, 2004.

Chairperson Garcia requested the word "proscription" on page 3 be changed to "prescription," and on page 9, the words "three votes were necessary" be changed to "unanimity was necessary."

Public Comment:

David Pilpel stated that three materials were given out at the meeting (October 18, 2004 Letter from Executive Director John St. Croix to Fair Political Practices Commission Chair Liane Randolph; October 8, 2004 Memo from Chairperson Michael Garcia to Commission Members and Staff regarding Rules of Debate; and Tentative Program Schedule for December 5-8 COGEL Conference). He also stated that in Section V, Motion 04-10-18-2, Commissioner Gusukuma dissented and in Section VII, Motion 04-10-18-3 was unanimously passed by a 3-0, not 5-0, vote.

Motion 04-11-08-1 (Lynn/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the Commission approve the minutes of the special meeting October 18, 2004, with the suggested changes.

IV. Executive Director's Report

Executive Director John St. Croix targeted several items in the report.

Budget: An initial interface was begun with the Mayor's office regarding next fiscal year's budget. Mr. St. Croix and Deputy Director Mabel Ng attended a meeting with the Mayor on the past Wednesday, when the Mayor said that the City needs to cut $97 million because Propositions J and K failed to pass the election. As of today, the Ethics Commission has not been asked to cut its budget.

Revenues: A revenues report was attached. The first installment of the $100,000 fine that was levied at the last meeting has been paid; respondents have six months to submit the other $50,000.

Public Finance program: There is $945 remaining out of the $670,000 that was budgeted for public grants in the Election Campaign Fund. The campaigns have thirty days from the day of the election to post additional expenses; it is possible that remaining funds will be used. Only one campaign actually received the maximum funding available; several came close based on the attached chart.

Permit Application: An interested persons meeting on the Permit Processing Code of Conduct is being held on Friday, November 19 at City Hall Room 408 from 10:00 a.m. - 12:00 p.m. Mr. St. Croix and Ms. Ng are planning site visits in December to agencies (Department of Building Inspection, Planning Department and Department of Public Works) and expect to have language for the Commission's consideration at the January meeting. The law states that a code needs to be adopted by February 15.

The Fair Political Practices Commission: The FPPC will consider the Ethics Commission's request for a formal opinion on whether candidates may send out mailings to urge voters to pick other candidates for their down ballot positions. The FPPC has tentatively scheduled a hearing on this issue at its meeting on January 20, 2005.

Auditing: Staff will begin audits of all publicly financed participants and several targeted and randomly selected campaign committees. Decisions will be made early in 2005, but the audits will not be completed before the end of calendar year 2005.

Non-filers: 83 non-filers were recently assessed late fines of $39,925.00, which brings the current outstanding balance to $117,815.00. The Bureau of Delinquent Revenues (BDR) which charges a fee of 25% per fine, has been used to collect fines. The Small Claims Court is also being looked at to accelerate collections. The process is very time consuming and the maximum of a claim is $5,000.

Campaign Consultants and Lobbyists: The revenues are low because registrations take place in January and the targeted budget figures will match more closely after January.

Statements of Economic Interests: There are currently 15 individuals who failed to file the SEIs that were due in April 2004.

COGEL conference: The conference is on track and is expecting 200-300 attendees. A ticket is available for commissioners to share. A copy of the schedule has been provided to the commissioners.

Lobbyist Program: The University of San Francisco (USF) has received a grant from the Leo McCarthy Foundation for a one-year project. The project is to create an on-line filing system for the lobbyist program. Work has begun in September by a team of six graduate students and a professor. Commissioner Lynn proposed that the Commission

issue a press release announcing the demonstration and inviting the public. He noted the $75,000 savings cost to the City, and acknowledged USF for the work. He thanked Larry Bush, former Mayor Agnos, and former Lieutenant Governor McCarthy for making the project possible.

Statements of Incompatible Activities: The Commission combined agenda item VI with its discussion of SIAs under agenda item IV. The Civil Service Commission is almost done reviewing the Statements of Incompatible Activities. A draft "Proposed Process for Consideration of Statements of Incompatible Activities" was submitted to the Commissioners for review. There are 63 Statements of Incompatible Activities. Staff will construct a template set of practices that will apply across the board to all agencies and will use this ~~criteria~~ criterion to review statements. After review, staff will notify all agencies of proposed changes to their Statements in December. Agencies and employee representatives may respond to staff with suggested corrections or changes. Statements will be provided to the Commission in January. Each Commissioner may have 12-15 statements; then the Commission may consider them en bloc. In addition, agencies, employee representatives or interested persons may also testify at the Commission meeting. After the meeting, the statements must go to the employee representatives for review and comment, and then return to the Commission for final adoption. Vice-Chairperson Anglade expressed concern with the en bloc process since the Commissioners will not be able to look at each of the statements in-depth. Mr. St. Croix stated that not all 63 will involve debate, but any that generates concerns by Commissioners or members of the public may be looked at ~~closer~~ more closely. He hopes that the process will be completed by the end of February.

Mr. St. Croix stated that there are also other priorities such as the budget, changes to the CFRO, and filing of Statements of Economic Interests, etc. Mr. St. Croix will prepare a six months agenda item for the next Commission's meeting. He will send the agenda via e-mail to the Commissioners and make it available to the public. Deputy City Attorney Chad Jacobs informed the Commissioners not to reply to the e-mail or share comments with each other in order to avoid violating the Sunshine Ordinance by having an illegal meeting.

Commissioner Lynn commented on the budget crisis and the need to increase revenues in the lobbyist program by scrutinizing union lobbyists and making all lobbyists register. He stated that the list of SEI non-filers has the same names year after year, and at some point a willful violation of the failure to file a statement becomes a misdemeanor and needs serious action. Chairperson Garcia stated that there is a system for SEI non-filers and agreed with Commissioner Lynn to have a stepped-up fine whereby if the individual is a non-filer for one year, fines may be increased for a second year. Commissioner Lynn stated that the SEI late fine is maxed at $100, whereas under CFRO, fines may be assessed at more than the $100, and there may be potential criminal liability. Chairperson Garcia suggested that instead of the $100 fine, the fine would be increase incrementally. Commissioner Lynn also stated that in regards to the investigation and enforcement program, there are now forty complaints, ten of which have been received since the last meeting; however, there were over fifty complaints at the last meeting. He stated that the Executive Director's Report should be more specific about the disposition of these cases. Vice-Chairperson Anglade wanted to know the procedures for non-filers. Ms. Ng stated that for non-filers, notification is sent and if filed within 30 days, a certain fine is imposed and if filed after 30 days, the fine cannot be waived. Chairperson Garcia wanted the next Executive Director's Report to provide a status of whether the Commission may charge interest on overdue fines, which will provide an incentive for people to pay and pass collection costs onto the debtor (to mediate the 25% service fees from BDR by getting back 100% of the initial fines).

Public Comment:

Mr. Marsteller questioned whether regarding SIAs, Deputy City Attorneys for each department were involved in the process of interfacing with the departments and the law. Ms. Ng stated that agencies to which she has spoken have been involved with the City Attorney's office; however, there may be a few that have not. Mr. Marsteller also proposed that the Commission use the budget model to lump agencies together for consideration of the SIAs. He stated that Supervisor Maxwell has introduced legislation that has not been transmitted over that deals with electioneering literature circulating 90 days before an election. He stated that the Board had at one time provided $40,000 to fund the automation of the political consultant lobbyist databases, which could lead to an effective management enforcement tool for the Commission.

Mr. Pilpel wanted the next Commission meeting to have available the six months proposal from the Executive Director. He stated that in regards to the consent calendar, at any time any member of the Commission or public pulls an item from the calendar, it is considered a separate item and does not require two commissioners. He also wanted the budget to be calendared in the next meeting as a separate item for discussion on ideas for new revenues and initiatives. He stated that the Maxwell legislation file number 041489 was introduced on October 26, 2004 and was assigned under the 30 days rules to the Rules Committee which will expire on November 25, 2004. He stated that in the Executive Director's Report on page five, item numbers nine and ten, the Lobbyist program and Campaign Consultant program, it was not clear if additional fines were assessed or collected. He stated that for the SEIs that were not submitted on time, there needs to be a process to get repeat offenders and they should be more publicized. He is interested in reviewing the website to provide comments and feedback.

Commissioner Gusukuma asked why Supervisor Maxwell's legislation is an issue of the Commission's. City Attorney Chad Jacobs stated that because the CFRO was originally adopted by the voters, the legislative body of the City and County of San Francisco does not have the authority to amend the law unless the voters grant them that authority. The voters did so in the CFRO with a few conditions: one, the Ethics Commission must approve the amendment by a 4/5 vote; and two, the Board of Supervisors must approve it by a 2/3 vote; if those two conditions are not met, then it does not have to go back to the voters for approval. Ms. Ng stated that the legislation introduced by Supervisor Maxwell has not come to the Ethics Commission and once it has, it will be transmitted and calendared for the Commission's consideration.

V. Identification of possible amendments to the Campaign Finance Reform Ordinance, including the public financing program, which might be necessary in light of issues that arose during the November 2004 election, and the establishment of a timetable for the consideration of such possible amendments.

Ms. Ng stated that during this election there were some issues to be considered:

1. Lifting of the spending limits so early in the election session;
2. Adjusting the amounts of the spending limits;
3. Addressing section 1.122(b)'s impact on candidates who are subject to ranked-choice voting;
4. Adopting a provision that candidates who are receiving public funds must be up-to-date in their filings with the Ethics Commission; and
5. Addressing technical concerns (public finance program, post election expenses, and mass mailing disclosures).

Commissioner Lynn noted that the next election is a year from now and the public finance program will not occur until two years later; therefore, he stated that there is time to make changes in the CFRO. He believed that public outreach is helpful and should also include attorneys representing campaigns and lobbyists. He had a long list of suggested changes and, at the urging of his fellow Commissioners, agreed to provide his list in writing, prioritizing certain issues and categorizing his suggestions. He will provide a list to the Commission by Thanksgiving.

Public Comment:

Anita Mayo testified that she wanted Commissioner Lynn to prioritize the list; she added that she would participate in an interested persons meeting. Mr. Marsteller wanted to review the contribution limits and to have the City Attorney's opinion as to whether the $500 limit which was adopted in 1983 has kept up with inflation. Mr. Pilpel wanted to do more with the mass mailings: to require two copies to be filed with the Commission and if mass mailings are sent within the 17 days of the election, they should be filed within 24 hours.

VI. Establishment of a procedure and timetable for the Ethics Commission to consider the Statements of Incompatible Activities that have been submitted by the City's departments, boards and commissions.

See discussion in section IV.

VII. Consideration of whether under San Francisco Campaign and Governmental Conduct Code section 2.234(a)(1)(E), the Commission should grant a waiver to former Deputy City Attorney David Campos from the one-year post-employment restriction under S.F. Campaign and Governmental Conduct Code section 3.234(a)(1)(D).

(This item was considered by the Commission prior to consideration of items IV, V and VI.)

Mr. Campos testified regarding three points to be considered for his waiver request. First, he stated that there is no potential for undue influence or unfair advantage because CCSF and SFUSD involve the same constituents, the citizens of the City and County of San Francisco. Second, there is a mutually-beneficial contractual relationship that SFUSD and the City Attorney's Office have had for many years. Third, to the extent potential conflicts occur, given any attorney's ethical obligations, there are precautionary steps taken to avoid any actual or appearance of a conflict.

Commissioner Lynn saw two potential conflicts related to Mr. Campos's waiver request. First, were the Commission to extend its regulatory power to the

Superintendent of Schools and pass an ordinance so that the Superintendent cannot be involved in an election campaign, the School District may raise a sovereign immunity question concerning the City's ability to exercise regulatory power. Second, what would happen if the City Attorney was hypothetically accused of malpractice in a case representing the School District. Mr. Campos stated that his client is the SFUSD not the Superintendent. Mr. Campos also stated that he would seek outside counsel to avoid conflict.

Vice-Chairperson Anglade moved to accept staff's recommendation. Commissioner Lynn wanted to amend the motion so that the waiver would not extend to situations in which there is an adversarial relationship between the School Districtand the City Attorney's office. Vice-Chairperson Anglade did not accept the amendment and no one seconded Commissioner Lynn proposal. Commissioner Gusukuma stated that if there were an actual conflict, an attorney may not continue to represent the client and the client may also bring a motion to disqualify counsel.

Motion 04-11-08-2 (Anglade/McCoy): Moved, seconded, and passed by a majority (4-1, Commissioner Lynn dissenting): that the Commission grant Mr. Campos' request for a waiver as recommended in the staff report.

Chairperson Garcia continued to consider the procedural aspects of a waiver request under S.F. C&GC Code 3.234(a)(1)(E). He said that in January 2004, the Commission unanimously voted to delegate waiver decisions to the Executive Director if it is a hardship for the person requesting a waiver to wait until the Commission's next meeting. Here, the Executive Director conducted a hearing but did not issue a decision because one or more Commissioners expressed concern. Commissioner Lynn said he was concerned some may believe that the mere presence of words "that a decision is necessary before the next meeting" divests the Commission of jurisdiction and may lead to forum shopping. He proposed that if there is a waiver request, the Executive Director calls a hearing on whether there is an emergency. Vice-Chairperson Anglade proposed having criteria to guide the handling of waiver requests. Mr. St. Croix stated that he will provide guidelines to the Commission for the next meeting.

Public Comment:

Mr. Pilpel stated that staff time in evaluating waiver request should be charged to the recipient.

Mr. Marsteller was also concerned of staff time being used to evaluate waiver requests.

VIII. Review and approval of draft annual report for FY 2003-2004.

Commissioner Lynn addressed the need to stress the fact that the Ethics Commission has a budgetary problem. The Commissioners had a lengthy discussion of the report and reviewed each section with recommended changes. Mr. St. Croix suggested draft language to clarify that the Commission is beset with unfunded mandates, and stated that he would amend the annual report with other recommended changes.

Motion 04-11-08-3 (Lynn/Anglade): Moved, seconded, and unanimously passed by a majority (5:0): that the Commission approved with amendments, the Commission's Annual Report for FY 2003-04.

IX. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

There were no inquiries.

Public Comment:

There was no public comment.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

Commissioner Lynn wanted, in regards to the Sunshine Ordinance, education and training to be provided to departments. He also wanted to incorporate sunshine into the enforcement process of the Commission.

Public Comment:

Mr. Pilpel stated that under section 67.33 of the Administrative Code, training responsibility is with the City's Sunshine Ordinance Task Force.

X. Summary of Commission Action.

Chairperson Garcia summarized that a waiver was granted to former Deputy City Attorney David Campos from the one-year post-employment restriction under the S.F. Campaign and Governmental Conduct Code section 3.234(a)(1)(D) to communicate with his former agency on behalf of SF Unified School District; the Commission discussed a procedure to consider the Statements of Incompatible Activities submitted by the City's Departments, Boards and Commissions; the Commission discussed possible amendments to the Campaign Finance Reform Ordinance, including the public financing program; and the Commission reviewed and approved a draft of the Annual Report of the Ethics Commission for FY 2003-2004.

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Mr. St. Croix introduced and thanked Fiona Cox, a law student, who has been interning and assisting at the Ethics Commission. Chairperson Garcia thanked Ms. Cox for her valuable assistance to the Commission.

XI. Adjournment.

Motion 04-11-08-4 (Lynn/Anglade): Moved, seconded, and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 8:55 p.m.

Respectfully submitted,

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SarahLeah Dang

Campaign Finance/Budget Officer

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Ethics Commission

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SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
DECEMBER 13, 2004, 5:30 P.M.
and AGENDA

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. **Call to order and roll call.**

II. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

III. **Approval of the minutes of the regular meeting of November 8, 2004. (Discussion and possible action.)**

IV. **Executive Director's report**

V. **Consideration of two amendments to the Campaign Finance Reform Ordinance. One proposal would amend section 1.126, which restricts campaign contributions by City contractors, to extend the limits to San Francisco Unified School District and the San Francisco Community College District contractors. A second proposal would amend section 1.128 to require the Director of Elections to publish in the Voter Information Handbook a notice informing voters whether a candidate for City elective office has accepted or not accepted the voluntary spending limit. A staff report on the proposed legislation is available from the Commission office and on its website. (Discussion and possible action.)**

VI. **Consideration of alternatives, including possible legislation, for the Ethics Commission to recoup some of the costs, including interest, associated with the collection of fines. Draft legislation will be available at the Commission office and on its website on Thursday, December 9, 2004. (Discussion and possible action.)**

VII. **Commissioner questions and proposed future agenda items.**

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion and possible action.)

VIII. Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff
Number of possible cases: 6

IX. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation as plaintiff.

X. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting. (Discussion and possible action.)

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the SF Admin. Code) or to report a violation of the ordinance, contact Donna Hall, Sunshine Ordinance Task Force, City Hall, Room 409, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102-4683. Telephone: (415) 554-7724; Fax: (415) 554-7854; E-mail: Donna_Hall@ci.sf.ca.us. Copies of the Sunshine Ordinance can be obtained from the Sunshine Task Force, the San Francisco Public Library and on the City's web site at www.ci.sf.ca.us

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Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct. Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300; fax (415) 581-2317 and web site www.sfgov.org/ethics

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Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
DECEMBER 13, 2004, 5:30 P.M.
and AGENDA REVISED

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1 Dr. Carlton B. Goodlett Place, San Francisco

12-09-04P04:11 RCVD

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Approval of the minutes of the regular meeting of November 8, 2004. (Discussion and possible action.)

IV. Executive Director's report

V. Consideration of two amendments to the Campaign Finance Reform Ordinance. One proposal would amend section 1.126, which restricts campaign contributions by City contractors, to extend the limits to San Francisco Unified School District and the San Francisco Community College District contractors. A second proposal would amend section 1.128 to require the Director of Elections to publish in the Voter Information Handbook a notice informing voters whether a candidate for City elective office has accepted or not accepted the voluntary spending limit. A staff report on the proposed legislation is available from the Commission office and on its website. (Discussion and possible action.)

VI. Consideration of alternatives, including possible legislation, for the Ethics Commission to recoup some of the costs, including interest, associated with the collection of fines. Draft legislation will be available at the Commission office and on its website on Thursday, December 9, 2004. (Discussion and possible action.)

VII. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion and possible action.)

VIII. **Consideration of Proposed Advice Letter to Supervisor-Elect Mirkarimi regarding fundraising limitations for inaugural and transition activities, including restrictions under Sections 1.114 and 1.200 of the San Francisco Campaign and Governmental Conduct Code.**

IX. **Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting. (Discussion and possible action.)**

X. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

XI. **Adjournment.**

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Ethics Commission

December 13, 2004

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

December 13, 2004

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I. Call to order and roll call.

Chairperson Michael Garcia called the meeting to order at 5:40 p.m.

COMMISSION MEMBERS PRESENT: Michael Garcia, Chairperson; Michele Anglade, Vice-Chairperson; Joe Lynn, Commissioner; Emi Gusukuma, Commissioner (arrived at 5:55 p.m.); and Waukeen McCoy, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Legal Analyst/Investigator.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Donald Ellison; David Pilpel; Charles Marsteller; Anita Mayo; Oliver Luby; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Executive Director's Report for the Meeting of December 13, 2004

Draft Minutes of the Regular Meeting of November 8, 2004

Memo from Executive Director re: Legislation to Amend San Francisco Campaign and Governmental Conduct Code sections 1.126 and 1.128, December 2, 2004

Draft Amendments to Sections 10.38 and 10.41-1 and Additional Section 10.40-2 to Chapter 10, Article V of the Administrative Code

Materials distributed at the meeting:

Draft Advice Letter to Supervisor-Elect Ross Mirkarimi re: Fundraising Limitations for Inaugural and Transition Activities, December 13, 2004

Letter from Supervisor-Elect Ross Mirkarimi to Executive Director re: Fundraising Limitations for Inaugural and Transition Activities, December 7, 2004

Proposed Legislation Authorizing the Ethics Commission to Collect Outstanding Amounts Owed and to Recover Costs of Collection

5-Month Goals Target, Ethics Commission

Chairperson Garcia noted the passing of Eric Allen Bass, the founder of www.joefire.com, who was also active in local politics.

Chairperson Garcia noted that the annual Counsel on Governmental Ethics Laws (COGEL) conference was hosted by the Commission on December 5-8. He thanked Commission staff for all of their hard work in planning and executing the conference, and he mentioned that Carol Carson and Tony Kramer complimented Commission staff for all of their time and efforts.

Commissioner Lynn stated that he served as a panelist on a local agency roundtable and that he spoke about budget issues and the need for increased public support during times of economic difficulty. He mentioned that he found the sessions to be informative, especially the one on a model campaign finance law.

Deputy Director Ng commented that there were about 280 registrants at the COGEL conference and that it was widely lauded as a huge success. Plenary speakers included Michael Josephson who founded the Josephson Institute and Character Counts, Oakland Mayor Jerry Brown, Karamjit Singh, Commissioner of the U.K. Electoral Commission and political activist and author Ariana Huffington. The awards banquet was well-attended with 300 people, and Mayor Gavin Newsom stopped by to mingle with the attendees. Next year's COGEL conference will be held in Boston, Massachusetts.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Donald Ellison, prior coordinator of San Francisco Common Cause from 1980 to 1998, stated that he was involved with Proposition X, the subject of the draft advice letter before the Commission, and Proposition K, which established the Ethics Commission. The impetus for Proposition X was to halt the practice of contributors giving large donations for supervisors for payments for social gatherings. He stated that there was never any contemplation that these types of funds could be used for inaugural celebrations because it was not an issue on anyone's radar; but this is now a problem that needs to be addressed.

III. Approval of the minutes of the ~~special~~ regular meeting of November 8, 2004.

Commissioner Lynn noted that on the top of page 7, the minutes did not accurately reflect his comments. He proposed that the first paragraph be amended as follows:

Commissioner Lynn said he was concerned some may believe that the mere presence of words "that a decision is necessary before the next meeting" divests the Commission of jurisdiction and may lead to forum shopping. He proposed that if there is a waiver request, the Executive Director calls a hearing on whether there is an emergency.

Chairperson Garcia proposed that on the last paragraph on page 3, the following changes be made:

Staff will construct a template set of practices that will apply across the board to all agencies and will use this ~~criteria~~ criterion to review statements.

Mr. St. Croix stated that not all 63 will involve debate, but any that generates concerns by Commissioners or members of the public may be looked at ~~closer~~ more closely.

Public Comment:

There was no public comment.

Motion 04-12-13-1 (Lynn/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the Commission approve the minutes of the special meeting November 8, 2004, with the proposed changes.

IV. Executive Director's Report

Executive Director John St. Croix stated that the public financing campaign program is

closed and that at the close of business today, there were claims for $759,701, which is $89,701 more than the amount appropriated. He met with the Mayor's Office and contacted Supervisor Chris Daly's office, and the Commission has begun the process of securing supplemental funds to make up for this difference.

Next, Mr. St. Croix noted that Commission staff has calendered a draft advice letter to Supervisor-Elect Ross Mirkarimi, regarding the use of funds for inaugural activities. Lastly, Mr. St. Croix mentioned that the Civil Service Committee is still in the process of reviewing the Statements of Incompatible Activities ("SIAs") and that they hope to complete their review by December 20, 2004. He and Deputy Director Mabel Ng are in the process of reviewing the SIAs.

Commissioner Gusukuma inquired about the subject matter of the Jim Lazarus advice letter. Ms. Ng responded that that letter dealt with whether officers and employees of a non-profit organization can make contributions to candidates for the Board of Supervisors.

Commissioner Lynn recommended that staff possibly develop work-orders for work that Commission staff performs for other departments, such as the SIAs. He also recommended that the School Board and Community College Board be asked to share in the costs of the Commission serving as their filing officers. Chairperson Garcia requested that this issue be placed on a future agenda. Director St. Croix responded that staff would pursue this issue and place it on a future agenda.

Commissioner Lynn noted that the FPPC is proposing a change in the law to close the loophole on the odd-even year problem. He stated that he would like the Commission to address this on a local level. He then noted in the tables in the Executive Director's Report that Anita Grier appears as both a non-responsive filer and a person who has failed to file a Statement of Economic Interests and this is very worrisome to him.

Commissioner Lynn stated that with respect to the work that the Fines Collection Officer has performed on the major donor reports, it was a massive undertaking, as over 100 letters were sent out, and he commended the Fines Collection Officer for his work. He also stated that he met with people from the University of San Francisco regarding the electronic filing project and he was very impressed with their work. Next, he noted that he and Director St. Croix addressed a group of visiting urban geographers from Kings College in London. He commented that with regards to the streamlined enforcement program, the Commission passed it six months ago and although Commissioner Anglade asked for a six-month status report, Commissioner Lynn has not seen any action taken. He recommended that staff make an effort to execute the expedited enforcement program. Finally, he complimented staff for their work on the COGEL conference.

Public Comment:

Anita Mayo, at attorney with Pillsbury Winthrop, LLP, referred to Item Number 6 of the Executive Director's Report. Her law firm and some of her firm's clients received correspondence from the Commission, indicating that they were required to file major donor reports with the Commission for the second half of calendar year 2000. If required to file these reports with the Commission, such reports were due by January 31, 2001. Receipt of the letters caused much concern for both the firm and

its clients, because if they had in fact missed a filing date, late filing fees at the rate of $10 per day, or $13,730, could have been assessed against each of the firm's clients.

Ms. Mayo stated that after reviewing its records and its clients' records, the law firm determined that for the firm and for most of its clients that received the letter from the Commission, during calendar year 2000, they qualified as a state major donor committee. This meant that contributions were made to state candidates and committees and/or to candidates and committees outside of San Francisco. State major donors do not file reports with the Ethics Commission; instead, they file reports with the California Secretary of State, the San Francisco Department of Elections, and the Registrar-Recorder of Los Angeles County.

Ms. Mayo continued that in response to the filing issues raised in the letters sent by the Commission, the firm sent responsive letters to Commission staff on behalf of the firm and its clients. Included in these responses were copies of reports which had previously been filed with the aforementioned agencies. Upon receipt of these letters, Commission staff sent another letter to the firm, acknowledging that the original letters had been sent in error.

Ms. Mayo added that there may be some donors in the City who made contributions during calendar year 2000 who were required to file reports with the Commission and failed to do so. Many donors, including individuals and small businesses, are unaware that they have an obligation file campaign disclosure reports. It is unfair to assess the maximum penalty against these donors at the end of 2004 for filings which were due in January 2001. By sending these late filing notices almost four years after the filing deadline, it appears that the Commission's primary purpose was the assessment of large fines and penalties, rather than public disclosure of campaign contributions. She urged the Commission to refrain from assessing the maximum fines and penalties against these contributors.

1. **Consideration of two amendments to the Campaign Finance Reform Ordinance. One proposal would amend section 1.126, which restricts campaign contributions by City contractors, to extend the limits to San Francisco Unified School District and the San Francisco Community College District contractors. A second proposal would amend section 1.128, which requires the Director of Elections to publish in the Voter Information Handbook a notice informing voters whether a candidate for City elective office has accepted or not accepted the voluntary spending limit.**

Deputy Director Ng explained the background of these two amendments. At a December 1, 2004 Rules Committee meeting, the Board of Supervisors considered two pieces of legislation, both of which were sponsored by Supervisor Gonzalez. Both amendments passed the Rules Committee and were advanced to the full Board of Supervisors for their consideration, as well as to the Ethics Commission. On December 7, 2004, the Board unanimously passed both amendments on their first readings. The Board will hold a second reading on December 14, provided that the Commission first takes action on the amendments.

Under the Campaign Finance Reform Ordinance ("CFRO"), amendments can be made only if: 1) the amendment furthers the purpose of the CFRO; 2) the amendment is submitted to the Ethics Commission and is approved by its members by a fourth-fifths vote; 3) the legislation is made available for public review for a 30-day period; and

the Board of Supervisors adopts the legislation by a two-thirds vote. The Rules Committee requested that the Commission consider these two amendments separately from other possible CFRO amendments which the Commission may consider in the near future.

The first piece of legislation amends section 1.126 of the CFRO. Section 1.126 bars any person who contracts with the City from making campaign contributions to City elective officers who must approve the contract. The prohibition applies to the City elective officer, a candidate for such office, and any committee controlled by such officer or candidate. The ban applies at any time from the commencement of contract negotiations until either the termination of contract negotiations or three months after the date the contract is approved by the City elective officer or board on which the officer sits.

The proposed legislation would extend this ban to contractors who conduct business with the San Francisco Unified School District and the San Francisco Community College District. Although elected members of the School Board and Community College Board are generally subject to the City's campaign finance laws, they were excluded from this particular provision. Because the purpose of section 1.126 is to prevent actual or perceived corruption stemming from the influence of campaign contributions in the award of public contracts, this provision should be applied to these two public entities. As such, staff recommends approval of this amendment.

Public Comment:

Milton Marks, member of the San Francisco Community College Board, stated that it is important for the public to know that there is no favoritism between contractors and public officials. He also noted that he was not speaking on behalf of the Community College Board, but rather, on behalf of himself. He encouraged the Commission to approve this legislation.

Commissioner Lynn stated that he had listened to the Rules Committee tape and found some of Mr. Marks' comments regarding the time of the ban to be of particular interest. He asked if Mr. Marks could elaborate on those comments. Mr. Marks stated that there was a free speech issue and that perhaps the ban should include a period

of time at the beginning and end of the contract when the ban is in effect.

Commissioner Gusukuma inquired if the proposed legislation applied to employment contracts. Ms. Ng responded in the negative, noting that the legislation applies to contracts that go out to bid.

The second piece of legislation amends section 1.128 of the CFRO. Section 1.128 requires all candidates for City elective office to file a form with the Ethics Commission indicating whether they accept or reject the applicable spending limit. Under current law, the Director of Elections publishes in the Voter Information Pamphlet ("VIP"), on the same page that contains the candidate's statement of qualifications, a notice informing voters whether the candidate has accepted the voluntary spending limit. Under current law, there is no notice if the candidate does not accept the spending limit. Also, these notices are currently printed in a font size which is smaller than that of the candidate's statement of qualifications.

The proposed amendment would require the Director of Elections to publish in the VIP a notice informing voters whether a candidate has accepted or rejected the voluntary spending limit. This is the same information that candidates currently already provide to the Ethics Commission. The notice would be printed in the same font size and type as the candidate's statement of qualifications. At the Rules Committee meeting, John Arntz, Director of Elections, testified that he did not oppose this legislation. Staff recommends that the Commission approve this legislation because it would more clearly identify which candidates accepted and which candidates rejected the voluntary spending limit.

Commissioner McCoy inquired as to when the proposed amendment to section 1.126 would become effective. Ms. Ng responded that if the amendment was passed by the Commission and then adopted by the Board on December 14, 2004, the amendment then goes to the Mayor, who would have ten days to either veto or sign the legislation. The law would then take effect 30 days thereafter.

Commissioner McCoy inquired if there were any contractors that may be affected by this amendment. Ms. Ng responded that for contractors currently engaged in active negotiations, if this amendment passes and becomes law, they would be bound by this legislation. However, if negotiations terminate, the contractor can contribute to a City elective officer or candidate for such office. If ~~or if~~ the parties enter into a contract, then three months thereafter, the contractor can contribute to a City elective officer or candidate for such office.

Public Comment:

Charles Marsteller inquired if this was the amendment that was adopted in 2000,

concurrent with Proposition O. Commissioner Lynn responded that there was an amendment to this provision made in 2000, which added language that specified that a lease qualified as a contract. Mr. Marsteller stated that when they looked at Proposition O, they were looking to expand public financing to all contracting bodies, including the Board of Supervisors, School Board and Community College Board, and that this proposed legislation would further the goal of avoiding a potential or appearance of a financial conflict of interest.

David Pilpel stated that he supported the proposed amendment to section 1.126. He inquired when the 30 day waiting period begins to run. Ms. Ng responded that because this legislation had already sat at the Board for 30 days before the Rules Committee considered it, if the Commission adopts the legislation in its current form, then it does not need to sit for another 30 days.

Mr. Pilpel inquired if the Commission contacted the School District and College Board regarding the proposed legislation and whether either entity submitted a formal response. Mr. Marks responded that he informed Chancellor Day and the President of the Community College Board that the Commission would be considering the proposed legislation. He stated that once the Commission and Board of Supervisors takes action on the legislation, he will work with the Chancellor and his staff to establish a mechanism to implement the new law, and in particular create a list of contractors who would be affected.

Commissioner Lynn stated that this would be a good idea for the City to adopt, so if the City informed the public as to who these contractors were, the public could log onto the Commission's database and find out if there are any breaches of law. He stated that the proposal places limitations on candidates, not the School Board itself, so the candidates themselves would be liable if they accept inappropriate contributions.

Deputy City Attorney Claire Sylvia clarified that section 1.126 prohibits the person or entity who contracts with the City from making a contribution, and presumably such persons know that they are engaged in contracting activities.

Mr. Pilpel stated that he supports the concept presented by the legislation amending section 1.128. He suggested that the proposed legislation be amended so that section 1.128 replaces the phrase "accept or decline" with "accept or do not accept." Director St. Croix responded that this language reflected existing law and that the proposed changes were marked in italics and underlined.

Commissioner Anglade suggested that the VIP contain language which indicates how the voluntary spending expenditures may be lifted and candidates would then not be held to the contribution limits even though they had accepted them. Mr. St. Croix responded that staff would inquire if the Commission has purview over this particular

matter. Commissioner Lynn expressed a desire that the Commission brainstorm more ideas for how to disseminate such information to the public.

Commissioner Gusukuma inquired as to the penalty if a contractor violates section 1.126. Ms. Ng responded that such a violation constitutes a violation of the CFRO and violators are subject to an administrative penalty of up to $5,000 per violation. Commissioner Gusukuma inquired if the person who accepts the excessive contribution would be subject to a fine. Ms. Sylvia responded in the negative. Commissioner Gusukuma inquired as to the purpose of creating the aforementioned list of contractors. Ms. Sylvia responded that the prohibition is on the contractor who knows whether they are negotiating or entering into a contract, and the prohibition does not apply to the candidate.

Mr. Pilpel suggested that the Commission have a section in the VIP which explains the voluntary expenditure ceiling provisions of the CFRO.

Motion 04-12-13-2 (Lynn/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the Commission approve the two amendments, one to CFRO section 1.126 and the other to CFRO section 1.128, as drafted.

1. **Consideration of alternatives, including possible legislation, for the Ethics Commission to recoup some of the costs, including interest, associated with the collection of fines.**

Chairperson Garcia stated that there are individuals who owe the Commission outstanding fines. Currently, the Commission is not in compliance with the MOU that it has with the Bureau of Delinquent Revenues ("BDR") and the Commission needs to determine how best to collect these debts. He noted that perhaps the Commission could pass legislation which would allow the Commission to charge interest to those individuals who have outstanding fines. This would serve a two-fold purpose: 1) it would aid the department's budget shortfall; and 2) the accumulation of interest would likely prompt people who have delinquent financial obligations to pay off their debt.

Chairperson Garcia stated that currently, for every $100 debt that the Commission sends to BDR, BDR charges a $25 fee collection fee. He noted that it is a common business practice for the agency to pass this charge along to the debtor and suggested that the Commission consider adopting this practice. Ms. Sylvia clarified that these changes could be administratively effectuated through the MOU. Specifically, the MOU could be amended so that BDR would charge the collection costs to the debtor. If the Commission itself were to collect the fines and associated penalties from the debtors, this would require legislation.

Chairperson Garcia inquired as to when the 90-day period for referral of outstanding debts to BDR begins to toll. Ms. Sylvia clarified that the requirement that the Commission forward outstanding debts to BDR within 90 days of it being uncollected is in the law, not the MOU. Chairperson Garcia inquired if the current 90-day period is sufficient time for staff to exhaust its collection efforts.

Fine Collection Officer Oliver Luby stated that he would like the Commission to have greater flexibility than having its outstanding accounts automatically referred to BDR within 90 days. The negotiation and execution of a payment schedule with a debtor, for instance, is impacted by the 90-day referral deadline.

Chairperson Garcia inquired if the addition of interest penalties would provide debtors with an incentive to pay their outstanding debts. Mr. Luby answered in the affirmative, noting that a 25% penalty would certainly provide debtors an incentive to pay their outstanding debts. He stated that the proposal would not provide much of an incentive, because it calls for an increase in the interest rate by one percent per month, and for small debts, this would not constitute enough of a significant increase to prompt an individual to take action.

Commissioner Lynn inquired if these costs would be determined by the Commission in the form of a regulation. Ms. Sylvia responded that the proposed legislation did not currently contemplate the adoption of regulations to interpret it.

Mr. Luby stated that it would be difficult to individually determine the costs of collection for every account because the Commission staff lacks the resources to accomplish this. He suggested that the Commission consider a blanket imposition of costs. Ms. Sylvia responded that nothing in the legislation requires the Commission to adopt an across-the-board fee or to individually calculate the costs of each collection action; rather, the legislation allows staff to estimate the costs of collection.

Chairperson Garcia stated that the goal was to create a mechanism whereby the Commission could recoup some of the costs, specifically the collection fees charged by BDR, associated with its fines collection process. Commissioner Lynn stated that he had some concerns regarding the disproportionate impact on small outstanding debts.

Commissioner McCoy inquired as to the estimated number of cases that the

Commission refers to BDR per month. Mr. Luby replied that since the fall of 2002, the Commission has referred approximately 14 cases to BDR. Currently, there are approximately 6-7 outstanding accounts which have been referred to BDR, as well as 4-5 accounts which are awaiting referral to BDR.

Commissioner Gusukuma inquired as to the most efficient method by which to recoup these costs. Ms. Sylvia responded that one avenue would be to amend the ordinance to allow the Commission to collect its owed debts. Currently, some City agencies have to authority to collect their own fines. Other agencies, such as the Ethics Commission, are required to refer their cases to BDR. Commissioner Gusukuma inquired as to how the proposed legislation could be effectuated. Mr. Sylvia responded that the Commission could direct staff that it wanted to pursue the legislation, staff would send the proposed legislation to the Clerk of the Board, and the Commission would need to either find a Supervisor to sponsor the legislation or have the President of the Board introduce it for the department.

Commissioner Gusukuma inquired as to the expiration date of the current MOU between the Commission and BDR. Deputy Director Ng responded that the current MOU expires on June 30, 2005. Commissioner Gusukuma indicated that the Ethics Commission should not be in the business of collecting delinquent debt and expressed the view that there is certainly a reason why the twenty-five percent fee is charged by BRD - namely, that it obviates the need for the Ethics Commission to do the work to collect upon that debt.

Commissioner Anglade expressed concern regarding what constitutes an "uncollected" account. Ms. Sylvia responded that the existing statute does not provide such a definition.

Chairperson Garcia suggested that the Commission direct staff to research and provide recommendations regarding the issues raised in tonight's meeting.

Public Comment:

Mr. Pilpel stated that the Commission could consider certain language to the proposed legislation to give the Commission greater flexibility in recouping its collection costs.

The Commission went into recess at 7:10 p.m.

At 7:23 p.m., the Commission reconvened its meeting.

VII. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion and possible action.)

Chairperson Garcia proposed that for a future meeting, the Commission consider ideas related to the comments made by Ms. Mayo regarding the timeliness of the late filing notifications sent to major donors.

Commissioner Lynn stated that the School Board and the Community College District do not have lobbying ordinances and that the Commission is currently not enforcing the San Francisco Lobbyist Ordinance against either entity. He also suggested that because the next election is not until November 2005, staff delay its updating of the candidate guide so that any future CFRO amendments may be incorporated into the update.

Commissioner Gusukuma requested that for the issue raised by Ms. Mayo, the Commission include for consideration the letter from Thomas Hiltachk of the California Political Attorneys Association. She then inquired about the timeline of the SIAs. Director St. Croix responded it will take at least one month to receive revised versions from all of the agencies. Commissioner Gusukuma inquired if the Commission was going to reconsider its own SIA. Director St. Croix answered in the affirmative. Deputy Director Ng noted that staff was still awaiting final comments from the Civil Service Commission.

Commissioner Lynn renewed his request for bringing Sunshine into the Commission's enforcement procedures.

Public Comment:

Mr. Pilpel stated that the five-month goals memo was very helpful. He suggested that the Commission consider avenues by which to provide the public with more information regarding the status of complaints filed with the Commission.

VIII. Consideration of Proposed Advice Letter to Supervisor-Elect Mirkarimi regarding fundraising limitations for inaugural and transition activities, including restrictions under Sections 1.114 and 1.200 of the San Francisco Campaign and Governmental Conduct Code.

Deputy Director Ng stated that Supervisor-Elect Ross Mirkarimi has asked the Commission for advice regarding Sections 1.114 and 1.200 of the San Francisco Campaign and Governmental Conduct Code. Specifically, the question is whether Section 1.200 determines that Section 1.114 applies to limit the amount of individual contributions which he can accept to $500 for inaugural and transition expenses. Ms. Ng stated that because Mr. Mirkarimi's letter did not set forth specific facts, the draft advice letter constitutes informal advice. Informal advice does not provide immunity from prosecution.

Section 1.200 prohibits City officers from establishing any account, other than their campaign account, for the solicitation or expenditure of funds to pay expenses incurred directly in connection with carrying out the usual and necessary duties of holding office. Section 1.200 was enacted to preclude the use of "friends accounts" for officeholder expenses. It makes clear that contributions to a City officer's campaign account are subject to the $500 contribution limit of CFRO section 1.114.

Because Mr. Mirkarimi's request was not clear about how he planned to fund his inaugural and transition costs, staff's draft letter discusses the issues which staff believes are relevant to the raising and spending of funds for inaugural and transition purposes. Staff's response letter sets out five points:

1. Funds in his campaign account are subject to the $500 contribution limit.
2. Funds expended from his campaign account for inaugural purposes are not subject to the spending limit.
3. A non-profit public benefit corporation, other than his campaign account, may

be established to sponsor his inauguration.
4. Funds used for transitional purposes must come from his campaign account.

Commissioner Gusukuma inquired whether, because this letter was informal advice, the Commission needed to approve the letter. She also asked if the Commission was technically required to approve formal advice letters. Ms. Sylvia responded that the Commission was not required to approve either informal or advice letters. She also explained that the Commission had previously requested to review advice letters, without explicitly excluding informal advice letters, so staff has been providing all advice letters to the Commissioners. Although there was no consensus regarding the substance of the advice letter, Commissioner Gusukuma raised the point that a vote on the letter was not necessary, reflecting the general consensus of the Commission.

Public Comment:

Mr. Pilpel requested that for future advice letters, staff attach any referenced-advice letters. He stated that the advice letter could be more explicit with regards to whether a campaign contributor could or could not make additional contributions for the purposes of inaugural and transition expenses.

Mr. Marsteller stated that he believed that the Clerk's office and the Mayor's Office had money in their budgets for transition expenses.

Chairperson Garcia stated that the Commission was not taking any action on this item.

IX. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting.

The Chairperson stated that the Commission had taken the following action: 1) defer for future consideration new procedures concerning the collection of outstanding debt; 2) discussed an informal advice letter to Supervisor-Elect Ross Mirkarimi, regarding funding for inaugural and transitional expenses; 3) unanimously passed amendments to the CFRO, regarding section 1.126 to extend campaign contribution bans to contractors with the San Francisco Unified School District and the San Francisco Community College District, and section 1.128 to require the Director of Elections to publish in the VIP notification as to whether or not a candidate has accepted the campaign spending limits, and to publish such information in the same font size and type as the candidate's statement of qualificiations; and 4)

acknowledged the passing of Eric Allen Bass.

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

XI. Adjournment.

Motion 04-12-13-3 (Anglade/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 8:10 p.m.

Respectfully submitted,

_____

Richard Mo

Legal Analyst/Investigator

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